



**JOINT MEETING OF THE
MILPITAS CITY COUNCIL,
SUCCESSOR AGENCY AND
PUBLIC FINANCING AUTHORITY**

AGENDA

TUESDAY, OCTOBER 17, 2017

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA

5:00 P.M. (CLOSED SESSION)

7:00 P.M. (PUBLIC BUSINESS)

SUMMARY OF CONTENTS

- I. CALL TO ORDER by Mayor and ROLL CALL by City Clerk**
- II. ADJOURN TO CLOSED SESSION (5:00 PM)**
- (a) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**
Pursuant to California Government Code Section 54957.6
City Negotiator: Tina Murphy
Employee Group: Milpitas Employees Association
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
- (b) PUBLIC EMPLOYEE APPOINTMENT/HIRING**
Pursuant to California Government Code Section 54957
Title of position to be filled: City Manager
- (c) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - Santa Clara County Superior Court Case No. 17CV309235
- (d) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
First Amendment Coalition v. City of Milpitas – Santa Clara County Superior Court Case No. 17CV310994
- (e) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823
- (f) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to Government Code Section 54956.9(d)(2) – City as Defendant
- III. CLOSED SESSION ANNOUNCEMENT:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Nuñez)**

VI. PRESENTATIONS

- Proclaim Domestic Violence Awareness Month for October
- Proclaim Manufacturing Day on October 13, 2017
- Annual Neighborhood Beautification Awards

VII. PUBLIC FORUM

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

VIII. ANNOUNCEMENTS

IX. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

X. APPROVAL OF AGENDA

XI. CONSENT CALENDAR (Items with asterisks*)

Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

- *1. Accept Schedule of Meetings/City Council Calendars for October and November 2017**
- *2. Approve City Council Meeting Minutes of October 2, 3 and 5, 2017 (Staff Contact: Mary Lavelle, 408-586-3001)**
- *3. Appropriate \$2,920 from the Senior Center Holding Account to the Senior Center Operating Budget for the Milpitas Community Garden Program (Staff Contact: Lynette Wilson, 408-586-3408)**
- *4. Approve City Council Regular Meeting Schedule for 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**
- *5. Waive the Second Reading and Adopt Ordinance No. 38.830 Amending the City's Zoning Map (Staff Contact: Sarah Fleming, 408-586-3278)**
- *6. CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCING AUTHORITY
Adopt a Joint Resolution Approving the Adoption of a Debt Management Policy; and, Adopt a City Council Resolution Authorizing the Refinancing of Wastewater System Obligations (Bonds), Appoint Financing Team and Approve Related Matters (Staff Contact: Will Fuentes, 408-586-3111)**
- *7. Adopt a Resolution Authorizing the Purchasing Agent to Purchase Four City Vehicles from the National Auto Fleet Group for Not-To-Exceed \$148,941.54 through a Cooperative Procurement Contract through the National Joint Powers Alliance (Staff Contact: Chris Schroeder, 408-586-3161 and Henry Kwong, 408-586-2419)**
- *8. Adopt a Resolution Authorizing the Chief of Police to Execute the Agreement with the California Office of Traffic Safety (OTS) for the 2018 Selective Traffic Enforcement Program (STEP) Grant (Staff Contact: Henry Kwong, 408-586-2419)**

- *9. Award the Bid to BrightView Landscape Service, Inc. and Authorize the City Manager to Execute a Contract with BrightView for City of Milpitas Parks Maintenance Service, Initially Not to Exceed \$1,241,776 (Staff Contacts: Robert Hill, 408-586-2626 and Chris Schroeder, 408-586-3161)**
- *10. Approve Amendment No. 2 to Franchise Agreement with Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials (Staff Contacts: Leslie Stobbe, 408-586-3352 and Christopher Diaz, 408-586-3040)**
- *11. Approve and Authorize the City Manager to Execute an Improvement Agreement for a New Self-Storage Facility at 1 Hanson Court by One Hanson, LLC (Staff Contact: Judy Chu, 408-586-3325)**

XII. UNFINISHED BUSINESS

- 12. Adopt a Resolution Approving the Site Development Permit for Construction of a 1,072 square foot Carport with Rooftop Solar Photovoltaic System, Adjacent to an Existing Bungalow and Residence in the Hillside at 430 Evans Road (Staff Contact: Lillian Hua, 408-586-3073)**
- 13. Adopt a Resolution Amending the City's Classification Plan to Re-Assign Police Support Services Manager to Unrepresented and Adjust Salary Range (Staff Contact: Tina Murphy, 408-586-3086)**
- 14. Approve and Authorize the City Manager to Execute Consultant Services Agreement with RMC Water and Environment for Support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179 (Staff Contact: Steve Chan, 408-586-3324)**
- 15. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with Tributary Agencies of San José/ Santa Clara Regional Wastewater Facility (Staff Contact: Tony Ndah, 408-586-2602)**
- 16. Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**
- 17. Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission, and Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)**
- 18. Accept Report and Provide Direction to Staff on Community Choice Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**

XIII. REPORT

- 19. Per Request of Mayor, Consider Approving More than 4 Hours of Staff to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)**

XIV. NEW BUSINESS

- 20. Receive Report from Information Services Director Regarding Comcast Cable Store Closure at 597 E. Calaveras Boulevard (Staff Contact: Mike Luu, 408-586-2706)**

XV. ORDINANCE

21. Waive the First Reading and Introduce Ordinance No. 48.21 Amending Title V Chapter 200 of the Milpitas Municipal Code Regarding Solid Waste Management (Staff Contact: Greg Chung, 408-586-3355)

XVI. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVII. ADJOURNMENT

NEXT SPECIAL CITY COUNCIL MEETINGS

WEDNESDAY, OCTOBER 18, 2017

SATURDAY, NOVEMBER 4, 2017

NEXT REGULAR CITY COUNCIL MEETING

TUESDAY, NOVEMBER 7, 2017

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:
www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Current vacancies on: Arts Commission
Bicycle Pedestrian Advisory Commission
Community Advisory Commission
Economic Development Commission
Emergency Preparedness Commission
Library Commission
Parks, Recreation & Cultural Resources Commission
Recycling & Source Reduction Advisory Commission
Sister Cities Commission
Telecommunications Commission
Youth Advisory Commission

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office at 408-586-3003 for more information.

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122

对中国人来说，请用 408-586-3263

Para sa Tagalog, tawagan 408-586-3051

Para español, llame 408-586-3232

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

AGENDA REPORTS

XI. CONSENT CALENDAR

- *3. Appropriate \$2,920 from the Senior Center Holding Account to the Senior Center Operating Budget for the Milpitas Community Garden Program (Staff Contact: Lynette Wilson, 408-586-3408)**

Background: The Community Garden is located on Milpitas Unified School District property (Weller School) as part of the standing Joint Use Agreement. The Garden hosts 47 individual garden plots that are 100% utilized by Milpitas residents. The Garden, as part of the City's larger Recycled Water Line conversion project, now has new use requirements requiring additional equipment for use by the gardeners. In an effort to meet these requirements and enhance the program at minimal financial cost to the gardeners, Recreation and Community Services is purchasing equipment and supplies including hoses, quick coupler keys, and wheel barrows.

Fiscal Impact: Appropriate funds from the Senior Center holding account to the Recreation and Community Services Senior Center operating budget. This action will not impact the General Fund.

Recommendation: Appropriate \$2,920 from the Senior Center Holding account to the Recreation and Community Services Senior Center operating budget for the City of Milpitas Community Garden program.

Attachment: Budget Change Form

- *4. Approve City Council Regular Meeting Schedule for 2018 (Staff Contact: Mary Lavelle, 408-586-3001)**

Background: The Milpitas Mayor and City Council are requested to consider and adopt their meeting schedule for 2018. Regarding the City Council's summer time meeting dates, it has been tradition to cancel both of the July regular Milpitas City Council meeting dates.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2018. Staff requests that the Council act on a confirmed schedule for 2018 for its regular bi-monthly Tuesday business meetings. The proposed schedule is included in the Council agenda packet.

Recommendation: Move to approve the 2018 City Council meeting schedule.

Attachment: 2018 Regular City Council meeting dates

- *5. Waive the Second Reading and Adopt Ordinance No. 38.830 Amending the City's Zoning Map (Staff Contact: Sarah Fleming, 408-586-3278)**

Background: Ordinance No. 38.830 was introduced following waiving of the first reading beyond the title at the October 3, 2017 Council meeting. This Ordinance is now ready for its second reading and adoption. This Ordinance changes the zoning designation of 8.7 acres from industrial park with transit oriented development overlay (MP-TOD) to Multiple Family—High Density with Transit Oriented Development Overlay (R3-TOD) at 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard.

Recommendation: Waive the second reading and adopt Ordinance No. 38.830 amending the City's Zoning Map.

Attachment: Ordinance No. 38.830 for adoption

- *6. **CITY COUNCIL/SUCCESSOR AGENCY/PUBLIC FINANCING AUTHORITY**
Adopt a Joint Resolution Approving the Adoption of a Debt Management Policy; and, Authorize the Refinancing of Wastewater System Obligations (Bonds), Appoint Financing Team and Approve Related Matters (Staff Contact: Will Fuentes, 408-586-3111)

Background: Due to favorable market conditions, the City can refinance the 2006 Series A Certificates of Participation Sewer Financing (“2006 Certificates”) via the issuance, in one or more series, of the Bonds. The Bonds would be issued by the City pursuant to applicable provisions of the California Government Code, and be secured by a pledge of net revenues of the wastewater (sewer) system.

To obtain funds to finance certain capital projects that are part of the wastewater (sewer) system, the City previously entered into an Installment Sale Agreement, dated as of December 1, 2006, between the Milpitas Public Financing Authority and the City (the “2006 Agreement”). Payments by the City under the 2006 Agreement were secured by a pledge of net revenues of the wastewater (sewer) system, and used by the Authority as security for the execution and delivery of the 2006 Certificates, in the initial principal amount of \$9,535,000. The pledge of net revenues of the wastewater (sewer) system in the 2006 Agreement is similar to what is being proposed in the current refinancing.

To assist in the refinancing, staff recommends that the firm of Fieldman, Rolapp & Associates, Inc. (FRA), be hired by the City as municipal advisor, and the firm of Jones Hall, A Professional Law Corporation, be hired by the City as bond counsel and disclosure counsel. Staff, in consultation with the municipal advisor, further recommends that the refinancing of the 2006 Certificates be effectuated via the public offering of the Bonds and a negotiated sale to Stifel, Nicolaus & Company, Incorporated, as underwriter. The sale of Bonds through a negotiated sale will provide greater flexibility in choosing the date and timing of the sale, more flexibility in the structure of the Bonds, and greater expected cost savings.

One of the two resolutions before Council authorizes the refinancing to commence and hires the financing team, as described above. At a subsequent meeting, staff will return to the City Council with a further resolution approving legal documents and a preliminary official statement pursuant to which the Bonds will be offered to the public.

Senate Bill 1029 (SB 1029), which became effective on January 1, 2017, amended California Government Code 8855 to add certain requirements related to the issuance and administration of debt by local agencies, including requiring the adoption of a debt policy meeting the requirements of California Government Code 8855. This impacts the City, the Successor Agency to the former Milpitas Redevelopment Agency, and the Authority.

In connection with the issuance of new debt by City, the City will need to submit to the California Debt and Investment Advisory Commission (CDIAC) a preliminary report of debt issuance which will include a certification that the City has adopted a debt policy that meets the requirements of the new legislation, which are found in California Government Code 8855. Adoption of the debt policies by the City Council (in its role as City Council and as Board of the Successor Agency and Board of the Milpitas Public Financing Authority) is required for compliance with the new legislation.

In accordance with Government Code 8855, a local debt policy must include all of the following:

- A. The purposes for which the debt proceeds may be used.
- B. The types of debt that may be issued.

- C. The relationship of the debt to, and integration with, the issuer's capital improvement program or budget, if applicable.
- D. Policy goals related to the issuer's planning goals and objectives.
- E. The internal control procedures that the issuer has implemented, or will implement, to ensure that the proceeds of the proposed debt issuance will be directed to the intended use.

The contemplated debt management policy meets all of these requirements. Thus, two resolutions are presented for City Council adoption:

- (1) A joint resolution of the City, Successor Agency to the former Milpitas Redevelopment Agency and Milpitas Public Financing Authority adopting a debt management policy.
- (2) A resolution of the City authorizing the refinancing of wastewater system obligations.

Fiscal Impact: Due to favorable market conditions, the City can refinance the 2006 Certificates via the issuance of the Bonds. Net present value (NPV) savings to the City are currently estimated at \$484,608 total or 8.65% of refunded bonds. These savings will be realized over the next nine years and be a benefit to the City and the wastewater (sewer) system ratepayers. Government Finance Officers Association (GFOA) guidance recommends pursuing refinancing opportunities when the NPV savings are greater than 3%. This refinancing exceeds that threshold by 5.65 percentage points. However, potential savings are based on market conditions as of the date of the staff report, and could change. Assuming City Council approval of the resolutions, the refinancing transaction is expected to close in December 2017. All costs of issuance to FRA, Jones Hall, and Stifel will be paid from proceeds of bonds issued and not be a direct expense of the City.

Recommendations:

- 1. Adopt a joint resolution of the City Council, Successor Agency and Public Financing Authority adopting a Debt Management Policy.
- 2. Adopt a City Council resolution authorizing the refinancing of Wastewater System Obligations (bonds), appointing the financing team and approving related matters.

Attachments:

- a) Joint Resolution of City, Successor Agency and PFA
- b) City Council Resolution
- c) Agreement with Jones, Hall
- d) Amendment No.1 to Agreement with Fieldman, Rolapp & Associates
- e) Engagement Letter with Stifel, Nicolaus & Co.

- *7. **Adopt a Resolution Authorizing the Purchasing Agent to Purchase Four City Vehicles from the National Auto Fleet Group for Not-To-Exceed \$148,941.54 through a Cooperative Procurement Contract through the National Joint Powers Alliance (Staff Contact: Chris Schroeder, 408-586-3161 and Henry Kwong, 408-586-2419)**

Background: To support the ongoing operational needs of the Police Department, the City needs to purchase two Police Interceptor Utility vehicles for \$36,314.47 each, one Chevrolet Tahoe for \$41,186.97, and one Ford F150 SuperCrew Cab truck for \$35,125.63, for a not-to-exceed amount of \$148,941.54. The vehicles are necessary to support the patrol and investigative services work of the Police Department. The four new vehicles will replace older vehicles that have reached the end of their useful life as police vehicles.

Staff recommends a cooperative purchase through the National Joint Powers Alliance (NJPA). Cooperative purchasing through NJPA is specifically authorized pursuant to Municipal Code Section I-2-3.08 "Cooperative Procurement." The Purchasing Agent reviewed all of the documentation from the National Joint Powers Alliance Request for

Proposal (RFP) No. 120716 entitled “Vehicles, Cars, Vans, SUVs, and Light Trucks with Related Equipment, Accessories, and Services” and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as the City of Milpitas’ Purchasing Division.

Fiscal Impact: Sufficient funds for the purchase are in the Equipment Fund’s operating budget.

Recommendation: Adopt a resolution authorizing the Purchasing Agent to purchase four City vehicles from the National Auto Fleet Group for an amount not to exceed \$148,941.54 through a cooperative procurement contract through the National Joint Powers Alliance.

Attachments: Resolution and National Auto Fleet Group quotes

***8. Adopt a Resolution Authorizing the Chief of Police to Execute the Agreement with the California Office of Traffic Safety (OTS) for the 2018 Selective Traffic Enforcement Program (STEP) Grant (Staff Contact: Henry Kwong, 408-586-2419)**

Background: The California Office of Traffic Safety (OTS) is administering the 2018 Selective Traffic Enforcement Program (STEP) that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures specifically directed towards Traffic Safety Operations.

Best practice strategies will be conducted to reduce the number of persons killed and injured in traffic collisions involving impairment and other primary collision factors. The funded strategies may include enforcement operations focusing on impaired driving, distracted driving, night-time seat belt use, motorcycle safety, and pedestrian & bicycle safety. Operations are conducted in areas with disproportionate numbers of traffic collisions. Other funded strategies may include public awareness, educational programs, and training for law enforcement.

The City of Milpitas has been approved for a grant of \$100,000.00 to conduct Driving Under the Influence (DUI) saturation patrols, DUI checkpoints, traffic enforcement operations, distracted driving enforcement, motorcycle safety programs, pedestrian & bicycle safety programs, public education, equipment purchases, and training on an overtime basis in conjunction with the STEP grant between October 1, 2017 and September 30, 2018.

Fiscal Impact: None – The expenditures will be reimbursed by the grant.

Recommendation:

1. Adopt a resolution authorizing the Chief of Police to execute the agreement with the California Office of Traffic Safety for the 2018 Selective Traffic Enforcement Program (STEP) grant.
2. Approve a budget appropriation in the amount of \$100,000 to the Milpitas Police Department overtime budget as a result of the 2018 STEP grant.

Attachments: Resolution and California Office of Traffic Safety Grant Agreement

***9. Award the Bid to BrightView Landscape Service, Inc. and Authorize the City Manager to Execute a Contract with BrightView for City of Milpitas Parks Maintenance Service, Initially Not to Exceed \$1,241,776 (Staff Contacts: Robert Hill, 408-586-2626 and Chris Schroeder, 408-586-3161)**

Background: On April 5, 2017, Request for Proposal (RFP) 2190 was issued for City of Milpitas Parks Maintenance Service. Purchasing staff worked closely with Public Works staff to develop the specification and bid package for the RFP. Services under the contract include

full maintenance, repair and landscape services for 26 City parks. The RFP was advertised in the local newspaper, on City website and through Public Purchase. Six contractors submitted proposals, two of which were disqualified for failure to meet the minimum requirements. The remaining four proposals were evaluated by a committee of three: the Public Works Director and two Public Works Managers. The committee scored proposals based on various criteria including price, technical abilities and qualifications, quality of the proposal, and references. Unfortunately, none of the proposals fell within acceptable budgetary limits for an award.

On June 2, 2017, a request for Revised Pricing based on a reduced scope was sent to the same four Contractors. Revised pricing was received on June 6, 2017 and that did not result in any price reduction sufficient to make a recommendation for award. On June 22, 2017, the City rejected all bids and issued a four month bridge contract to the current parks contractor Terracare Associates, with a significantly reduced scope for \$383,733 for the period July 1, 2017 to October 31, 2017.

On August 28, 2017, an RFP 2210 for City of Milpitas Parks Maintenance Service was issued. Purchasing staff worked closely with Public Works staff to rewrite the specification and bid package for the RFP. Services under the contract include full maintenance, repair and landscape services for 26 City parks. The RFP was advertised in the local newspaper, on City website, and through Public Purchase. Three contractors submitted proposals, one of which was disqualified for failure to meet the minimum requirements. The proposals were evaluated by a committee of three: the Deputy Public Works Director and two Public Works Managers. The committee scored the proposals based on various criteria including price, technical abilities and qualifications, quality of the proposal, and references.

The recommendation for the bid award is to BrightView Landscape Services, Inc. and is based on the offering that is considered to be the best value and most advantageous to the City. The new contract for City of Milpitas Parks Maintenance Service includes an initial one-year period in the amount of \$1,241,776 commencing November 1, 2017 through October 31, 2018. The proposed contract includes four 1-year options for renewal. Renewal years contain a compensation adjustment clause based on the Consumer Price Index (CPI) for All Urban Consumers, Not Seasonally Adjusted, All Items, San-Francisco-Oakland-San Jose or 5%, whichever is less. Four annual renewal options total an amount not to exceed \$4,967,104 resulting in a total not-to-exceed five year contract of \$6,208,880, excluding CPI compensation adjustments. After posting the Notice of Intent to Award (Pending Bid Results), no protest was filed.

Fiscal Impact: Funds are available in the Public Works operating budget for this purchase.

Recommendations:

1. Award a bid to BrightView Landscape Services Inc. and authorize the City Manager to execute a contract with BrightView for City of Milpitas Parks Maintenance Service, initially not to exceed \$1,241,776.
2. Authorize the Purchasing Agent to extend the term of the contract annually for each of the four option years with annual price increases per the terms of the agreement and without further City Council action, except for appropriation of funds.

Attachment: Summary of contract with Brightview

- *10. Approve Amendment No. 2 to Franchise Agreement with Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials (Staff Contacts: Leslie Stobbe, 408-586-3352 and Christopher Diaz, 408-586-3040)**

Background: On November 14, 2016, the City Council adopted Resolution No. 8602 to award the franchise agreement for collection of solid waste and collection and processing of

recyclable materials and organic materials to Milpitas Sanitation, Inc. (“MSI”). On March 21, 2017, the City Council approved Amendment No. 1 to the Agreement, in order to modify the approved disposal site from Guadalupe Landfill to Kirby Canyon Landfill and to modify the initial maximum rates to reflect that change. The commencement date of the agreement is December 1, 2017, and the transition from the current franchisee to MSI is underway.

During the preparations for the commencement of services, some items have arisen that require clarification to the Agreement to ensure the timely and successful delivery of services. The most significant item involves terms pertaining to facilities to process and transfer the City’s materials.

Per the Agreement, MSI’s approved facilities for transfer of garbage and organics and processing of recyclables and construction and demolition debris are with Greenwaste Recovery, Inc. (“GWR”) located at 625 Charles Street in San Jose. In establishing an agreement for services provided by GWR to MSI, it was determined that certain provisions of the Agreement were unclear with respect to GWR’s status as an approved facility providing “post-collection” services to MSI vs. a subcontractor providing collection services on behalf of MSI.

Proposed changes clarify that in providing post-collection services to MSI, GWR is not a “Subcontractor” but rather an “Approved Facility” as defined in the Agreement. This clarification is consistent with standard practice in the industry, consistent with the relationship of the parties, and enables the City and MSI to secure the use of the GWR facility. The changes to the Agreement on this item as well as other certain changes are included in the attached Amendment No. 2 to Agreement and summarized in the Analysis section below.

On August 21, 2017, the City of Milpitas entered into a professional services agreement with R3 Consulting Group, Inc. (“R3”), a firm qualified in solid waste management consulting, to provide support related to the transition of franchisees and the commencement of the new Agreement with MSI, including review of the proposed Amendment No. 2 to the Agreement.

Analysis: Summary and analysis of the primary changes to the Agreement included in Amendment No. 2 to Agreement are as follows:

1. Amend definition of “Change in Law”.

Analysis: The changes extend the definition to Subcontractors and Approved Facilities, meaning that a Change in Law affecting Subcontractors or Approved Facilities could then trigger an Extraordinary Rate Adjustment per Section 8.4 of the Agreement and/or trigger Proposition 218 Indemnification per Section 9.1.F of the Agreement. To the extent that changes in law do affect costs for Subcontractors or Approved Facilities utilized by MSI in performing the services of the Agreement, then it would not be unreasonable for MSI to request an Extraordinary Rate Adjustment to cover those increased costs.

2. Add definitions for “Related Party Entity” and “Related Party Entity Transaction”.

Analysis: The definitions provide clarification on the terms.

3. Amend definition of “Subcontractor”.

Analysis: The amendments clarify that Approved Facilities are not considered Subcontractors for purposes of the Agreement.

4. Language edits in Section 2.C.1 of each of Exhibit D-1 and Exhibit D-2 of the Agreement in reference to the Approved Disposal Facility and Approved Transfer Facility.

Analysis: The edits are clean-up items.

5. Amend Exhibit L of the Agreement to reflect service changes and establish rates for additional services.

Analysis: The rates that have been previously approved by Council are not being changed. The primary purpose of this amendment is to clarify rates that have already been defined and to provide rate information for services that were previously undefined. MSI is requesting updates to Exhibit L. R3 reviewed the changes from the currently-adopted rates from Amendment No. 1 to proposed changes in Amendment No. 2. The revised rates primarily provide clarifications on rates and rate codes that were discussed in the original Agreement but were not included in the original Exhibit L. The revisions also include clarifications to some of the previously defined rates R3 reviewed the calculation methodology used to derive each rate and finds them to be in alignment with the methodology used to calculate the currently-adopted rates and finds them to be reasonable, appropriate, and acceptable. The most significant changes include:

- a. Establishing a rate of \$27.87 per quarter for backyard/side yard service, calculated using the lowest currently-adopted rate for push pull service.
- b. Clarifying a limit of three (3) Recyclable Materials carts and three (3) Yard Trimmings carts per Single Family customer account.
- c. Specifying parameters for Bulky Bag / Bulky Item Collection and establishing rates for additional material set out during a scheduled Bulky Bag / Bulky Item Collection and additional Bulky Bag / Bulky Item Collections scheduled beyond the number provided to each account at no charge.
- d. Establishing a rate for Single Family Bin for a Day, based on the currently-adopted delivery fee.
- e. Establishing rates for some Multi-Family and Commercial Yard Trimmings service levels that were missing from the currently-adopted rates.
- f. Establishing rates for compacted materials in bins, which are in use in the City but were missing from the currently-adopted rates, based on the same calculation methodology used for the currently-adopted rates.
- g. Establishing late fees and other miscellaneous charges that might come about in certain situations but were missing from the currently-adopted rates.

1. Amend first paragraph in Section 3.9 of the Agreement.

Analysis: The amendments clarify that City-directed changes to scope may affect MSI's agreement(s) with Approved Facilities, for which MSI would need to establish new compensation if City-directed changes result in increased costs at Approved Facilities.

2. Amend Article 4 of the Agreement.

Analysis: There are a variety of service-related amendments which provide language clean-up, clarifications of service levels, containers, service frequency, acceptable materials, processing techniques, and resolution of inconsistencies with regard to customer service hours. R3 reviewed the changes and finds them to be reasonable, appropriate, and acceptable.

3. Amend Exhibit B, Section 3.B.12 of the Agreement.

Analysis: The amendments appropriately clarify that Multi-Family program implementation will include Recycling as required by AB 341 in addition to Yard Trimmings as required by AB 1826.

Changes to the Agreement included in Amendment No. 2 to Agreement are reasonable, appropriate, and acceptable.

California Environmental Quality Act: As stated in the prior memo included in the City Council agenda packet for the meetings of October 17, 2016 and November 14, 2016 entitled “Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios:”

“...even when considering the emissions impact associated with the worst case scenario for the City- approved waste disposal contract (disposal project) in conjunction with the diversion project, the total emissions still fall well below the criteria pollutant thresholds. With respect to GHG emissions, recycling and composting provide lifecycle benefits that far outweigh the impacts from transporting and processing of both the landfilled materials and the materials diverted from landfill...the City of Milpitas’ new and proposed contractual arrangements for hauling, landfill disposal, and diversion of solid waste materials (the combined disposal and diversion projects considered herein) are exempt from CEQA per CEQA Guidelines section 15301, as the contracted activities represent the continued operation of existing public facilities that involve “negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

The changes in draft Amendment No. 2 to Agreement do not alter the services in any significant way relative to CEQA, and CEQA Guideline 15301 would still apply.

Alternative: The ability of MSI to secure an agreement for recyclable materials, yard trimmings and construction and demolition debris processing and solid waste transfer is dependent upon Amendment No. 2 to Agreement. Approval of Amendment No. 2 to Agreement is necessary to ensure continuity of services and provides clarifications to support the ongoing management of the Agreement.

Fiscal Impact: None. The cost of collection of solid waste and collection and processing of recyclable materials and organic materials will be included in the customer rates, and revised rates remain in alignment with the rates that have been agreed to for this new contract.

Recommendation: Approve Amendment No. 2 to the Agreement with Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials.

Attachment: Amendment No. 2 to Agreement

***11. Approve and Authorize the City Manager to Execute an Improvement Agreement for a New Self-Storage Facility at 1 Hanson Court by One Hanson, LLC (Staff Contact: Judy Chu, 408-586-3325)**

Background: On October 28, 2015, the City of Milpitas Planning Commission conditionally approved a Site Development Permit and a Conditional Use Permit for construction of a new self-storage facility located at 1 Hanson Court west of Milpitas Boulevard and north of Abel Street by One Hanson, LLC.

The City Engineer has reviewed and approved public improvement plans (E-EN16-0183) pursuant to MMC XI-1-7.09-2. The developer has executed an Improvement Agreement as

approved by the City Attorney as to form and by the City Engineer as to substance pursuant to MMC XI-1-17.01, paid all development fees and provided improvement securities (\$160,000.00 for faithful performance and \$160,000.00 for labor and materials) to guarantee completion of required public improvements.

California Environmental Quality Act: Execution of an agreement is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Fiscal Impact: None.

Recommendation: Approve and authorize the City Manager to execute an Improvement Agreement for a new self-storage facility at 1 Hanson Court by One Hanson, LLC

Attachment: Public Improvement Agreement

XII. UNFINISHED BUSINESS

12. Adopt a Resolution Approving the Site Development Permit for Construction of a 1,072 square foot Carport with Rooftop Solar Photovoltaic System, Adjacent to an Existing Bungalow and Residence in the Hillside at 430 Evans Road (Staff Contact: Lillian Hua, 408-586-3073)

Background: The City received an application to construct a 1,072 square foot carport with rooftop solar photovoltaic system, adjacent to an existing bungalow and residence in the hillside. The project site is a developed 5.1 acre parcel located along Evans Road. The property is zoned as R1-H in the Hillside Combining District and the General Plan designation is Hillside Very Low Density.

The Planning Commission unanimously recommended approval of the Site Development Permit for the project on August 23, 2017. Commissioners determined the project is consistent with the policies and guiding principles identified in the General Plan, and satisfies the requirements specified in the Zoning Ordinance. The project's architectural design and site planning is aesthetically compatible with the neighboring homes. The project meets the development standards set forth by the Zoning Code and incorporates earth tone colors, complementing the surrounding color palette.

Environmental: A categorical exemption pursuant to Section 15303(e) of the CEQA Guidelines – New Construction or Conversion of Small Structures, has been applied to this project. Section 15303(e) includes, but limited to, the construction of accessory structures including garages, carports, patios, swimming pools, and fences. The project's proposed new construction of a carport with a rooftop solar photovoltaic system are within a residentially zoned area.

Fiscal Impact: None.

Recommendation: Adopt a resolution approving Site Development Permit No. SD17-0009 to construct a new carport with rooftop solar photovoltaic system on a 5.1 acre site located at 430 Evans Road.

Attachments:

- a) Resolution
- b) Planning Commission Meeting Minutes 8/23/2017
- c) Planning Commission Staff Report 8/23/2017
- d) Project Plans (separate bound document)

13. Adopt a Resolution Amending the City's Classification Plan to Re-Assign Police Support Services Manager to Unrepresented and Adjust Salary Range (Staff Contact: Tina Murphy, 408-586-3086)

Background: Amendments to the Classification Plan are periodically required to account for organizational changes and changes in job responsibilities. The proposed amendment reflects the following change. The classification of Police Support Services Manager was approved in the Fiscal Year 2017-2018 Operating Budget. This classification was originally assigned to the Mid-Management and Confidential Unit ("Mid-Con") with an annual salary of \$104,237 - \$138,983.

The job description for Police Support Services Manager was recently finalized and job duties indicate that this position would be best served as an unrepresented position. The Police Support Services Manager classification will be assigned to oversee the 9-1-1 Communications Center and Records Unit at the Milpitas Police Department, which includes 24.5 positions. The classification has administrative and management oversight of employees in the Communications Center and Records Unit, and will prepare and monitor the operating budget for these two sections of the Police Department.

Fiscal Impact: The recommended annual salary range for the position of Police Support Services Manager is \$112,500 - \$157,500. Increasing the salary range to the proposed amount will result in an increase of \$18,517 for FY 2017-18. No change to the funding for this position will be needed since the increase can be covered by salary savings from the position not filled for the full fiscal year.

Recommendation: Adopt a resolution amending the Classification Plan to re-assign the Police Support Services Manager from the Mid-Con bargaining unit to the Unrepresented Employees group and adjust the annual salary range for Police Support Services Manager to \$112,500 - \$157,500.

Attachment: Resolution + Exhibit (job classification)

14. Approve and Authorize the City Manager to Execute Consultant Services Agreement with RMC Water and Environment for Support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179 (Staff Contact: Steve Chan, 408-586-3324)

Background: Santa Clara Valley Transportation Authority (VTA) continues to move forward on the construction of the BART Extension and Montague Expressway Widening projects. RMC Water and Environment had provided water and sewer utility installation and relocation design review for the City during the design stages of these projects. Water and sewer engineering support services are needed to complete the construction and project close-out phases of these projects. Since RMC Water and Environment is familiar with the project scopes, they are most suited to provide the needed water and sewer engineering services to complete these projects.

The proposed RMC Water and Environment consultant services agreement has a total not-to-exceed sum of \$10,000 and agreement term to December 31, 2018.

California Environmental Quality Act: The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

Alternative: If this agreement is not approved, staff will not be available to provide support to projects which will impact construction and inspection of City infrastructure.

Fiscal Impact: None. There are sufficient funds in the project budgets. The City's Master Agreement with VTA allows reimbursement of City consultant costs for BART extension support services.

Recommendation: Approve and authorize the City Manager to execute Consultant Services Agreement with RMC Water and Environment for support on the Bay Area Rapid Transit Project, CIP No. 4265 and Montague Expressway Widening Project, CIP No. 4179.

Attachment: Agreement with RMC

15. Approve and Authorize the City Manager to Execute Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with Tributary Agencies of San José/ Santa Clara Regional Wastewater Facility (Staff Contact: Tony Ndah, 408-586-2602)

Background: The City of Milpitas currently discharges its wastewater effluent from the City owned and operated collection system to the San José/Santa Clara Regional Wastewater Facility ("RWF"). The City of San José is the majority owner of the RWF, the City of Santa Clara is a minority owner, with the following tributary agencies: West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, County Sanitation District 2-3 and City of Milpitas ("Tributary Agencies").

The RWF requires significant rehabilitation totaling \$2.2 billion over a 20 year period which is captured in a formal planning document known as the Plant Master Plan. To satisfy the Plant Master Plan, significant financial contributions from City of San José, City of Santa Clara and the Tributary Agencies are required. Milpitas is required to pay its fair share, which based on preliminary information provided by the City of San José, will fluctuate over the 20 year period. Three financing vehicles are being considered by the RWF including long term financing (e.g. Bonds), SRF (state revolving fund) loans, and short term financing (e.g. commercial paper). It is evident given these significant contributions, the City will need to consider these financing vehicles as a means to provide for rate stabilization and inter-generational rate equity among its sewer ratepayers. City of Santa Clara and the Tributary Agencies have been asked to confirm their participation in these financing vehicles so that City of San José can develop Master Agreement Amendments. The City has potential to finance with City of San José, independently or externally with other parties.

On August 11, 2015, City Council authorized the City Manager to enter into a Common Interest, Privilege and Confidentiality Agreement with the Tributary Agencies. City Council authorized litigation against the RWF on September 11, 2017. The proposed amendment updates the terms of the agreement to address the pending litigation as well as to make minor changes to the wording of the current agreement. The Agreement will allow the Parties to exchange legal information and advice regarding the RWF without the risk of waiving or diminishing any applicable privileges or protections. Amendment No. 1 is brought forward to respective governing bodies for approval during the month of October 2017.

Fiscal Impact: There is no fiscal impact associated with this Amendment.

Recommendation: Approve Amendment No. 1 to the Common Interest, Privilege and Confidentiality Agreement with West Valley Sanitation District, Cupertino Sanitary District, County Sanitation District 2-3 and Burbank Sanitary District of the San José/Santa Clara Regional Wastewater Facility and direct the City Manager to execute the amendment in a form approved by the City Attorney.

Attachment: None

16. **Review List for City Council of Items Due Back for Response from City Staff (Staff Contacts: Steve Pangelinan, 408-586-3051 and Mary Lavelle, 408-586-3001)**

Recommendation: review list (in agenda packet) and provide additional input on the draft document, prepared by City Clerk for the Council.

Attachment: List of Items Requested by City Council

17. **Receive Updated Information Responding to Council Input and Consider Adopting a Resolution to Amend the By-Laws of the Milpitas Planning Commission, and Discuss City of Milpitas Commissions and Process for Commission Appointments (Staff Contact: Steve Pangelinan, 408-586-3050)**

Background: Per request of the Milpitas Planning Commission in September 2016 to consider potential amendments to its rules and regulations, staff worked with Planning Commissioners to clean up existing language and draft a revised version of the by-laws. On August 1, 2017, the Planning Commission's recommendations were discussed by the Milpitas City Council. Council directed to staff to bring forward a Resolution to effectuate the proposed by-law amendments. Council is requested to adopt a resolution approving all amendments to the by-laws. Included in the agenda packet are copies of the Planning Commission by-laws showing all tracked changes and a final revised version.

In addition, Councilmembers have expressed an interest to discuss the 14 Council-appointed City of Milpitas Commissions, and the process for appointing residents to those bodies.

Recommendations:

- 1) If desired, adopt a resolution approving the updated By-Laws of the Milpitas Planning Commission.
- 2) Discuss City Commissions and process of appointments. Direct staff, as requested.

Attachments:

- a) Resolution
- b) Exhibit to Resolution (amended Planning Commission by-laws)
- c) Red-lined edition of Planning Commission By-Laws

18. **Accept Report and Provide Direction to Staff on Community Choice Energy Programs (Staff Contact: Edesa Bitbadal, 408-586-3052)**

Background: On May 2, 2017, City Council directed staff to study the Community Choice Energy program and to report back to the Council on possible options for the City of Milpitas.

Community Choice Aggregation (CCA), also commonly referred to as Community Choice Energy (CCE), enables cities, counties, and joint powers authorities (comprised of municipalities) that do not operate municipally-owned electric utilities to pool the electricity demand within their jurisdictions in order to procure and/or generate electrical power supplies on behalf of its residents and businesses while maintaining the existing electricity provider, Pacific Gas and Electric Company (PG&E), for electricity billing, transmission and distribution services.

When a city, county, or combinations thereof, creates a CCE program, it becomes the default provider of electricity for all residents and businesses within its jurisdiction. Customers, however, are provided the ability to opt-out of service from the CCE program and return to the incumbent utility for generation service at any time.

Authorized by California law in 2002, California is currently one of seven states that allow the formation of a CCE program, and presently there is one operational CCE in Santa Clara County: Silicon Valley Clean Energy (SVCE) launched in April 2017. Additionally, both East Bay Community Energy (EBCE) and San Jose Clean Energy (SJCE) anticipate serving customers in spring of 2018, while several more CCEs throughout the state are currently being considered for development. To date, only SVCE has expressed an interest in having the City of Milpitas join.

CCE programs typically provide electricity options with a higher mix of renewable energy than available from the incumbent utility; the percentage of energy from renewable sources currently ranges from 35 percent to 100 percent. Thus, primary reasons for pursuing a CCE program include the ability to achieve climate action plan goals through reductions in greenhouse gas emissions (GHG), and offering customers an alternative energy choice and cost competitive electric services.

Currently, all governance models for operational CCEs are either a joint powers agency or single jurisdiction, an example of each being detailed below:

1. Joint Powers Authority (JPA) Model: The JPA functions as an independent public agency, operating on behalf of its member jurisdictions with shared decision-making authority. This shared structure distributes the risks and liability across multiple jurisdictions, and minimizes risk to its member jurisdictions. Silicon Valley Clean Energy and East Bay Community Energy are examples of Bay Area CCEs using the JPA governance model.
2. Single Jurisdiction Model: A jurisdiction individually establishes and operates a CCE and therefore makes all policy decisions on revenues, power mix, and programs. Any risk and liability associated with the CCE fall solely on this single jurisdiction. In this model, it is recommended that the jurisdiction develop contractual language to minimize risk to the general fund, maintain adequate operating reserves, and proactively track regulatory activities and manage its energy portfolio. CleanPowerSF and San Jose Clean Energy are examples of Bay Area CCEs using the single jurisdiction governance models.

To date, all operational CCEs have conducted a feasibility report and/or a technical study prior to CCE program implementation, although this is not required under Public Utilities Code Section 366.2. Such studies typically include information on CCE formation requirements; evaluate load requirements, risks, and energy procurement using jurisdiction specific load data; analyze CCE program operations under different power mixes and program sizes, rate impacts and environmental benefits; and estimate start-up and other financing costs.

Local governments must pass the required CCA ordinance to join or establish a CCE program, and the CCE agency must update or draft an Implementation Plan that is certified by the California Public Utilities Commission (CPUC). This is typically done after an initial technical study to determine the amount of electricity that will be required, how much clean power can be integrated, and the extent to which a CCE can be cost competitive over time. The Implementation Plan outlines how the CCE will function, how it will set rates, how it will procure electricity, and how it will carry out all other functions required under CPUC regulations.

Based on this report and other Bay Area technical studies, five possible options are provided for the City of Milpitas.

1. Proceed with the steps necessary to join SVCE

Potential benefits of joining SVCE

- Eleven other Santa Clara County communities have already joined
- Program already launched
- Credit capacity and programs in development
- Easier transition/implementation
- Able to enroll customers sooner than EBCE/SJCE

Potential risks/downsides of joining SVCE

- Programs already in place; less/minimal input into their formation

2. Proceed with the steps necessary to join EBCE

Potential benefits of joining EBCE

- Since it hasn't launched yet, more opportunity to influence policy direction and program development
- Working on a local development business plan with emphasis on local power production in the East Bay

Potential risks/downsides of forming EBCE

- Take longer to enroll since programs have yet to be launched
- Take longer for job-creating programs to get up and running
- May be a small fish among some very large fish (Oakland, Hayward)

3. Proceed with the steps necessary to join SJCE

Potential benefits of joining SJCE

- May have opportunity for potential revenue sharing

Potential risks/downsides of joining SJCE

- Commitment of City resources likely needed when joining
- Take longer to enroll since programs have yet to be launched
- May have small influence in decision-making due to customer load

4. Proceed with the steps necessary to establish a Milpitas CCE

Potential benefits of forming Milpitas CCE

- More local control (voting shares not diluted)
- Greatest potential for local economic development (due largely to more local control)

Potential risks/downsides of forming Milpitas CCE

- Commitment of City resources to establish a new CCE agency
- Higher risks due to lack of experience, fewer partners
- Would need to establish programs, contractors, credit, etc.
- Longest time line to begin enrolling customers
- Given SVCE's presence in eleven Santa Clara County communities, potential customer confusion with multiple CCEs in the same county

5. Take no action at this time in pursuit of CCE and remain with PG&E

Potential benefits of remaining with PG&E

- Experienced provider
- State regulatory protection
- Continuity – same firm provides all services

- No action needed by City – status quo
- May be able to join a CCE at a later date (but perhaps at some cost)

Potential risks/downsides of remaining with PG&E

- Higher GHG emissions
- Less local renewable generation
- Higher electricity rates than CCE rates under most scenarios
- Less local control
- Less local input into policies and offerings
- Less local economic development

Fiscal Impact: None. There are no fiscal implications to accepting this report.

Recommendation: Receive staff report; and provide direction on Community Choice Energy programs.

Attachment: None

XIII. REPORT

- 19. Per Request of Mayor, Consider Approving More than 4 Hours of Staff to Return to Council with a Comprehensive Homeless Strategy (Contact: Mayor Tran, 408-586-3029)**

Recommendation: Consider Mayor’s request and if desired, approve more than four hours of staff time toward a plan for a comprehensive homeless strategy for City of Milpitas.

Attachment: None

XIV. NEW BUSINESS

- 20. Receive Report from Information Services Director Regarding Comcast Cable Store Closure at 597 E. Calaveras Boulevard (Staff Contact: Mike Luu, 408-586-2706)**

Background: As part of the franchise agreement between the City of Milpitas and Comcast approved in 2005, Comcast must provide a convenient location within the City for subscriber inquiries, bill payment and equipment transfers until such a time that these services are no longer required. On August 31, 2017, the City received a letter from Comcast notifying the City of pending closure of the cable store in Milpitas at the end of September 2017. Comcast planned to open a large new Xfinity store located at 1065 E. Brokaw Road in San Jose. Comcast will transfer operations from the current location in Milpitas to the new store. The new customer service center is located 5.5 miles from the existing customer service center. Besides going in person to the customer service center, customers can currently pay bills online, can get a pre-paid box to return equipment or simply drop off equipment at the closest UPS shipping location. Customers can also pay their bills at the nearest 7-11 or CVS retail locations.

Comcast is requesting an amendment to its franchise agreement to remove the requirement for a customer service center located within the City of Milpitas.

Fiscal Impact: None. The current franchise agreement between the city of Milpitas and Comcast will continue until 2020. Comcast will switch to a Digital Infrastructure Video and Competition Act (statewide) franchise after 2020.

Recommendation: Receive staff report from Information Services Director regarding the Comcast Cable store closure and direct staff to continue working with Comcast on an amendment to the agreement with Council's recommendation.

Attachments:

- a) city's current Franchise Agreement with Comcast Cable
- b) Cable Store Closure Letter to City

XV. ORDINANCE

- 21. Waive the First Reading and Introduce Ordinance No. 48.21 Amending Title V Chapter 200 of the Milpitas Municipal Code Regarding Solid Waste Management (Staff Contact: Greg Chung, 408-586-3355)**

Background: The Milpitas Municipal Code specifies requirements related to Solid Waste Management. On December 1, 2017, a franchise agreement with the City's new solid waste collector, Milpitas Sanitation, will commence. Code was revised to correlate the new solid waste provisions which become effective by the contract start date December 1, 2017.

Fiscal Impact: There is no fiscal impact to the proposed Ordinance adoption.

Recommendations:

1. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 48.21.
2. Introduce Ordinance No. 48.21 amending Chapter 200 of Title V of the Milpitas Municipal Code regarding solid waste management.

Attachment: Ordinance No. 48.21

XVI. REPORTS OF MAYOR & COUNCILMEMBERS – from the assigned Commissions, Committees and Agencies

XVII. ADJOURNMENT

NEXT SPECIAL CITY COUNCIL MEETINGS
WEDNESDAY, OCTOBER 18, 2017
SATURDAY, NOVEMBER 4, 2017

NEXT REGULAR CITY COUNCIL MEETING
TUESDAY, NOVEMBER 7, 2017

September 2017						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

November 2017						
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5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

MILPITAS CITY COUNCIL CALENDAR

October 2017



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 5:00 PM -City Council Special meeting – VTA/BART station tour 7:00 PM -Parks, Recreation & Cultural Resources Commission(GB)	3 6:00 PM -Closed Session 7:00 PM -City Council	4 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast group (BN) 5:30 PM -Veterans Commission (RT) 6:00 PM -Council Subcommittee on Non-Profits (BN/AP) 7:00 PM -Community Advisory Commission (MG)	5 5:30 PM -Santa Clara VTA Board of Directors (BN) 5:30 PM -Milpitas Chamber of Commerce Board 6:30 PM -City Council Special meeting	6	7
8	9 4:00 PM -Economic Development Commission (AP) 6:00 PM Council Subcommittee on Marijuana (AP/BN)	10	11 5:30 PM -Veterans Commission Special Meeting (RT) 7:00 PM -Planning Commission	12 2:00 PM Ad Hoc Subcommittee on Non-Profits (BN/AP) 4:00 PM -Santa Clara VTA Policy Advisory Committee (BN) 4:00 PM -Treatment Plant Advisory Committee (MG) 6:30 PM -Youth Advisory Commission – Mental Health Awareness Event (AP) 7:00 PM -Cities Assoc of SCC (MG)	13 10:00 AM Manufacturing Day Tour	14 VETERANS CAR SHOW 
15	16 7:00 PM Telecommunications Commission (GB)	17 5:00 PM -Closed Session 7:00 PM -City Council	18 1:00 PM -Ad Hoc Subcommittee on Marijuana (AP/BN) 5:30 PM -City Council Special Meeting - Citizens Task Force on Water Rates	19 10:00 AM -Santa Clara Congestion Management Program and Planning Committee (BN) 12:00 PM -Santa Clara VTA Admin & Finance Committee (BN) 7:00 PM -Youth Advisory Commission (AP)	20	21
22	23	24 1:30 PM -Senior Advisory Commission (BN) 6:00 PM -Recycling & Source Reduction Advisory Comm. (BN)	25 6:00 PM -Streets and Facilities Naming Subcommittee (GB/AP) 7:00 PM -Planning Commission	26 12:00 PM -Terrace Gardens Board of Directors (BN) 6:00 PM -Sister Cities Commission (AP)	27	28 PUMPKINS IN THE PARK 10 AM to 1 PM Cardoza Park 
29	30 4:00 PM City-Milpitas Unified School District Communications Committee (MG/BN)	31 				

October 2017						
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29	30	31				

December 2017						
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MILPITAS CITY COUNCIL CALENDAR

November 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 2:00 PM -Santa Clara VTA Monthly Briefing - Northeast Group (BN) (Santa Clara) 7:00 PM -Community Advisory Commission (MG)	2 1:30 PM -Santa Clara County Library Joint Powers Authority (GB) 5:30 PM -Chamber of Commerce Board 5:30 PM -Santa Clara Valley Transp. Authority Board of Directors (BN) 7:00 PM -Bicycle Pedestrian Advisory Commission (MG)	3	4 9:00 AM -Special Council Meeting – Budget Workshop
5	6 7:00 PM -Parks, Recreation & Cultural Resources Commission (GB)	7 6:00 PM -Closed Session 7:00 PM -City Council	8 1:30 PM -Milpitas Oversight Board 7:00 PM -Planning Commission	9 4:00 PM -Santa Clara VTA Policy Advisory Committee (BN) 4:00 PM -Treatment Plant Advisory Committee (MG) (San Jose) 7:00 PM -Cities Assoc of SCC (MG) 7:00 PM -Youth Advisory Commission (AP)	Friday, November 10 All City Departments closed in observance of Veterans Day 	
12	13 4:00 PM -Economic Development Commission (AP)	14	15	16 10:00 AM -VTA Congestion Management Program & Planning Committee (BN) 12:00 PM -VTA Administration & Finance Committee (BN) 7:00 PM -Emergency Preparedness Commission (MG) 7:00 PM -Bay Area Water Supply Conserv Agency (RT) (Foster City)	17	18
19	20 7:00 PM -Telecommunications Commission (GB)	21 6:00 PM -Closed Session 7:00 PM -City Council	22	23 and 24 THANKSGIVING DAY All City Departments closed for Holiday 		25
26	27 7:00 PM -Arts Commission (MG) 7:00 PM -Library Advisory Commission (GB)	28	29	30 6:00 PM -Sister Cities Commission		

**DRAFT MEETING MINUTES
CITY OF MILPITAS**

Minutes of:	Special Meeting of Milpitas City Council
Date:	Monday, October 2, 2017
Time:	5:00 PM
Location:	Milpitas Transit Center (BART station) 555 E. Capitol Avenue, Milpitas, CA

ROLL CALL

All those in attendance gathered together at 5:12 PM in the transit center parking lot for the scheduled tour.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo and Nuñez

ABSENT: Councilmember Phan

Acting City Manager Steve Pangelinan, City Clerk Mary Lavelle and other City management staff were present for this tour/meeting.

**PRESENTATION
AND TOUR**

Representatives from Santa Clara Valley Transportation Authority (project manager and public information officer) warmly greeted City officials at the site of the new Milpitas Transit Center, in the Transit Area near Montague. While the new BART station was nearing completion for the construction phase, there would be a great deal of testing to be done before the station opened for the public. VTA staff provided an in-depth tour of the station entry, the platform area, and the bike and car parking lots, including the scenic view from the top (6th floor) of the new parking garage. Unique station features including artistic colored glass - appreciated at sunset time - were highlighted on the tour.

Upon the conclusion of the station tour, VTA staff thanked City officials for coming and provided information to take home.

ADJOURNMENT

The meeting was adjourned at the conclusion of the BART station tour at 6:10 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*

***Draft* MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, October 3, 2017
Time: 6:00 PM Closed Session
7:00 PM Open Session
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Tran called the joint meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Barbadillo and Nuñez

ABSENT: Councilmember Phan was absent at roll call. He arrived shortly thereafter in the Closed Session.

CLOSED SESSION

City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that Mayor Tran would recuse himself on Closed Session agenda item (e).

City Council then convened in Open Session at 7:26 PM with all members present.

ANNOUNCEMENT

The City Attorney stated there was no reportable action out of Closed Session.

PLEDGE

Boy Scouts Troop No. 92 presented the flags and led all in the pledge of allegiance.

INVOCATION

Councilmember Nuñez introduced Pastor Jethroe Moore to provide the invocation prayer.

PRESENTATIONS

Mayor Tran presented the following items:

Proclaimed Fire Prevention Week for October 8 – 14, 2017 accepted by Deputy Fire Chief/Fire Marshal Albert Zamora and Fire Chief Rob Mihovich.

Proclaimed Freedom from Workplace Bullies Week for October 15 – 21, 2017, accepted by Human Resources Director Tina Murphy.

Proclaimed Hispanic Heritage Month for the month of October 2017, accepted by Councilmember Bob Nuñez and Public Works Director Nina Hawk.

Commended Tai Ji Mien Academy participants for their competition in Qi Gong marshal arts. The group showed a video of their sport on the overhead screen.

PUBLIC FORUM

Voltaire Montemayor, Milpitas resident, supported comments by Pastor Moore, and those who received commendations. He urged being proactive on peace and finding positive ways.

William Au, Sunnyhills resident, spoke on behalf of residents at the apartment complex. He was hoping to get an update on their residence situation.

Gail Hosner, resident, hoped the City was outreaching to non-profit organizations to see if any of those were interested in purchasing the Sunnyhills Apartments complex. She did not see the city working with the tenants. Tenant rights and procedures needed to be understood by residents.

Le Nguyen, Sunnyhills resident, spoke to the Council in Vietnamese language, asking Council to help the residents have peace of mind over their future.

Mr. Jung, Sunnyhills resident, spoke to the Council in Vietnamese language, had been here many times pleading Council to do something to help the residents, to find a place to live and not become homeless.

Hang Nguyen, resident, spoke to the Council in Vietnamese language, asked for help to remain in the Sunnyhills Apartments complex.

Cai Tran, Sunnyhills resident, spoke to the Council in Vietnamese language, as a tenant and resident of Milpitas, agreed with all comments before him, and asked for help to get a place to live.

Hien La, Sunnyhills resident, said she tried to reach the Mayor by phone and left a message but had not heard back from him. They continued to come back to City Council seeking help, for the situation at Sunnyhills. All the people there - especially seniors - needed help.

Thi Van Pham, resident, spoke to the Council in Vietnamese language, as a tenant Sunnyhills, was looking for solutions for the apartment complex, hoping for anything they could do.

Ms. Qui, resident, spoke to the Council in Vietnamese language, said she and her husband lived at Sunnyhills for 11 years, and at their age would not want to move. They needed help from the City.

Charlene Lee, San Jose resident, referred to past speakers and the Milpitas Police Department and past activity. She talked of the City Council, City Manager, City Clerk and corruption.

Christina and daughter, of Sunnyhills Apartments, spoke up for residents and their family. They hoped Council would help save their homes, and they loved living in Milpitas.

Trieu Le, resident, spoke about those who lived at Sunnyhills Apartments. He was very concerned about housing and where they would go after 10 months and 15 days. Residents were very worried about their future.

Robert Marini, Milpitas resident, spoke about a group that wanted to present a tiered (water) rate system. He gave his own history on water rates from the past and prior effort at a ballot initiative.

Councilmember Nuñez asked for copy of his information at the podium. Mr. Marini handed to the City Clerk paper copies of what he had presented overhead.

Michael Tsai, resident, commented on affordable housing and the great need in the greater Bay Area. He represented his participation in YIMBY (yes in my back yard). He would think about the big picture.

Mr. Bui, Sunnyhills resident, said his family had lived at the apartments for 30 years. If forced to leave the complex, they would have nowhere to go. He asked for help from the City.

Lisa Duong, resident, spoke to the Council in Vietnamese language, said her request was for City leaders to help residents stay living at Sunnyhills. They did not want to suffer.

Councilmember Nuñez said he appreciated the Mayor's meeting with speaker Charlene Lee. He'd heard her speak disparagingly about the Police Chief and others. He asked City Attorney Diaz to meet with her to find out if there was anything City officials should be doing to assist her.

ANNOUNCEMENTS

Acting City Manager Steve Pangelinan noted that Public Works Director Nina Hawk would be leaving the City for a new job and he wanted to note her accomplishments in the Department over the last two years. He announced that current Deputy Director Tony Ndash would serve as Acting Director of Public Works starting the following week.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Vice Mayor Grilli requested to move agenda item No. 23 (Sister Cities Commission work plan) onto the consent calendar.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Mayor Tran asked to remove item no. 8 (Resolution – hillside residence solar) from the consent calendar. He asked to move his Item No. 21 (homeless strategy) to the next City Council meeting on October 17.

Councilmember Nuñez requested to remove agenda items no. 9 (Resolution), no. 11 (SCS Engineers amendment), no. 12 (RMC Amendment) and no. 13 (amend Common Interest Agreement) from the consent calendar.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Diaz recommended to have the public hearing agenda item no. 15 heard first. Vice Mayor Grilli agreed and suggested then go to Unfinished Business items and after that, to return to the consent calendar items that were pulled for discussion. Council agreed with the order.

- | | |
|---------------------------------------|---|
| *1. Council Calendar | Accepted City Council calendars for September and October 2017. |
| *2. Meeting Minutes | Approved City Council meeting minutes of September 18, 19 and 21, 2017. |
| *3. Odor Control | Received the monthly update of the odor control report. |
| *4. Donations – Veterans | Accepted financial donations to the City’s Veterans Commission for the Veterans Car Show on October 16 and the Veterans Appreciation Lunch on November 18, and appropriated the funds received into the Recreation Special Events operating budget. |
| *5. Donation Request MCEE | Per request from the Milpitas Community Educational Endowment, approved a \$500 donation to the non-profit group for its Mid-Autumn Festival on October 7, 2017. |
| *6. Concert Band funds | Appropriated \$4,300 from the Recreation Community Concert Band Holding Account to the Performing Arts operating budget. |
| *7. Walk with Ease Grant | Accepted the grant from the California Arthritis Partnership Program and National Recreation and Park Association in the amount of \$2,500 and appropriated the same to the Barbara Lee Senior Center’s operating budget. |
| 8. Resolution – hillside home | This item was removed from the consent calendar but not heard. It would be continued. |
| 9. Resolution – Classification | This item was removed from the consent calendar but not heard. It would be continued. |
| *10. Resolution – Funding for Streets | Adopted Resolution No. 8699 amending the Capital Improvement Program 2017-18 budget for the Street Resurfacing Project 2018 to incorporate a list of projects funded by Senate Bill 1: the Road Repair and Accountability Act. |

11. Amendment No. 1 – Agreement with SCS	This item was removed from the consent calendar but not heard. It would be continued.
12. Agreement – Agreement with RMC Water	This item was removed from the consent calendar but not heard. It would be continued.
13. Amendment No. 1 – Common Interest Agreement	This item was removed from the consent calendar but not heard. It would be continued.
*14. Emergency Repair	Received this report of emergency repair of Technology Drive, Project No. 4287, and authorized payment of invoices up to \$750,000 for this work.
*23. Sister Cities Commission	Added to consent and approved the Sister Cities Commission’s Fiscal Year 2017-18 Work Plan.

PUBLIC HEARING

- 15.** Project at 1992 Tarob Ct. Planning Director Brad Misner reviewed the project and plans for residential building with zone and map changes needed to allow the proposed development at four addresses, including 1992 Tarob Court in the Transit Area. A General Plan amendment was needed along with other actions to change the land use from industrial use to High Density Transit Oriented Residential Development. The Economic Impact Study did not support a reduction of industrial space and fewer jobs if the change was approved. Mr. Misner described the staff’s recommendation to have a study session on the history of land use decisions.

From applicant The True Life Companies, Ms. Leah Beniston displayed overhead slides, describing the history of the lot layouts at the proposed site. She described the future green walking trail along the Penitencia Creek, near Tarob Ct., as a benefit for new residents.

Mayor Tran re-opened the public hearing and invited speakers from the audience.

Robert Marini, resident, asked about 53 units and what the mixture of bedroom size apartments would be. How many were low income, what were the affordable fees to be paid, and how many parking spaces for each there would be, he asked.

Mr. Misner said the units were all two or three bedroom units. Each unit would have a two-car parking, in the garage. The developer also would pay 5% of total construction costs into the affordable housing fund.

Voltaire Montemayor, resident, spoke of reducing industrial space to add residential would be a pro-active improvement. More housing would allow the City to compete.

Motion: to close the public hearing, following two speakers

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

City Attorney Diaz asked for disclosure by the City Council of any ex parte communications.

Councilmember Phan: had received additional documents from consultant for the project

Councilmember Barbadillo: none

Councilmember Nunez: none

Vice Mayor Grilli: none

Mayor Tran: met with applicant following the last City Council meeting

Vice Mayor Grilli asked about the jobs-housing ratio, and how would it change with this project. Mr. Misner reported that the loss of 144 jobs was a marginal number. The jobs to housing ratio would go from 1.94 to 1.91 ratio, after the project was built.

Mayor Tran commented on the ratio and other cities. He asked when the TASP gets fully built out and the impacts. Staff was studying that now, to come up with a current projection. The Mayor asked for staff to provide that information to City Council in coming weeks. He wanted to know the average ratio of jobs to residents, and what was healthy around the valley.

Councilmember Nuñez asked the history of the land in this part of the TASP. He asked about the General Plan committee and if it was talking about land use in the TASP area. Mr. Misner explained the two Specific Plans as “carve outs” in the future General Plan.

Councilmember Phan addressed the applicant from True Life Companies, asking for some explanation of figures given on the Fiscal Economic Benefits to Milpitas, including the “no impact on Milpitas Schools” comment. Mr. Phan asked staff more questions about the current General Plan land use designation and the zoning for the site parcels. He was struggling with what makes a good land use conversion. Then, he identified his own criteria for such and how the project would benefit the public by meeting his listed criteria. He was supportive.

Councilmember Barbadillo read from the staff report about the drafting of the TASP. Lands for high density and preservation of four parcels of industrial parcels in the project area were identified. He asked why that was done or what were the decision makers thinking on this particular element of the Plan. Mr. Misner could not speculate. More comments were made on designations in the TASP and the city’s zoning map. City Attorney Chris Diaz clarified that there was an economic impact study for this proposal and staff had requested for a study session.

Mayor Tran was concerned about jobs to resident ratio. Other services were affected, and he worried about water, public safety, if the city was equipped to protect additional residents, concern for crime in high density transit area, and was not sure about city wide movement to change land uses. They must do due diligence (students into a San Jose school district) and had not heard from that district. He wondered about City of San Jose and impacts to that city, as he wanted to be a good neighbor. The General Plan said to preserve land appropriately. He would not support this proposal.

Vice Mayor Grilli referred to her time on the school board, when Milpitas had petitioned East Side and Berryessa School Districts to keep the students from this area in Milpitas, but that was not accepted. She supported the proposed project and agreed it made sense to make this land all residential. She thought Council had given direction to staff back in January to have a study session, when the land use change for the mosque occurred. She felt Councilmember Phan laid out some good rationale for support.

Councilmember Nuñez understood this was the last piece that was not residential in the TASP, and that the Vice Mayor was correct to have a study city-wide on these land use changes, and look at community benefit. He was supportive.

Mayor Tran urged colleagues to think about affordable housing and housing for families. He could not support any more industrial to residential land change in Milpitas. He wanted to have homes in Milpitas for families, so people did not have to drive to Modesto. The No. 1 item was affordable housing.

Councilmember Phan wanted any future land use change, like this one, to be brought to the Economic Development Commission (beyond just the Planning Commission). He would like to have the study session as proposed.

Mayor Tran said he was a member of Transportation and Land Use Subcommittee, and not once did this project come before that body.

Councilmember Nuñez responded that such items did come to the Economic Development Commission in the past. Mr. Phan said he wanted to make that a requirement.

Mr. Barbadillo said he had a process he went through to come to his decision. He further described how he came to his choice to oppose this change while he supported the preservation of industrial zones. Mixed use might be okay wherein there would be a balance.

Councilmember Nuñez would like to have a plan brought back to Council to get his hands around the General Plan, to get Economic Development office to drive bringing companies here, and retain services that were acceptable. The applicant here had met all criteria, he noted.

Motion:

1. Adopt Resolution No. 8700 adopting the Addendum to the Environmental Impact Report for the Transit Area Specific Plan.
2. Adopt Resolution No. 8701 approving the General Plan Amendment and the Transit Area Specific Plan Amendment.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3
NOES: 2 (Barbadillo, Tran)

City Attorney Diaz read aloud the title of Ordinance No. 38.830 “An Ordinance of the City Council of the City of Milpitas Amending the City’s Zoning Map, Changing the Zoning Designation of 8.7 Acres from Industrial Park with Transit Oriented Development Overlay (MP-TOD) to Multiple Family High Density with Transit Oriented Development Overlay (R3-TOD) at 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court and 675 Trade Zone Boulevard.”

Motion: to waive the first reading of Ordinance No. 38.830 beyond the title and to introduce the ordinance

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3
NOES: 2 (Barbadillo, Tran)

Motion: to adopt Resolution No. 8702 approving the Vesting Tentative Map, Site Development Permit and Conditional Use Permit

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 3
NOES: 2 (Barbadillo, Tran)

City Council then took a break and returned to the dais at 10:21 PM.

UNFINISHED BUSINESS

16. Classification & Compensation Study

Human Resources Director Tina Murphy introduced the consultant from Ralph Andersen & Associates, Vice President Doug Johnson. He described the rationale for doing the “class & comp” study, and the method for the compensation survey. This was a customized one for the City of Milpitas (non-sworn personnel). He displayed a chart of Market Summary – Median, job titles with a bell curve overall showing jobs above/below market median. Also displayed was a chart that showed Milpitas employees versus 75th percentile. Mr. Johnson gave a summary of benefits analysis, where Milpitas was 1.2% above the median in the survey (salary) while 2.7% with base pay + cash and 3.6% above with base pay + cash + insurance.

Councilmember Nuñez asked when the City Council would get final numbers and the consultant replied, in a couple weeks. He referred to agenda item no. 9 earlier. Ms. Murphy explained about the Police Support Services Manager, which was not a classification yet in the city when the

study began, so that specific position wasn't included in the survey. Mr. Nuñez said he did not find any benefit to the report given.

Councilmember Phan asked the methodology on doing the survey. Mr. Johnson explained the research done by contacting the surveyed cities. Mr. Phan asked if more detailed information was available, to break it down by city. Mr. Johnson said yes. Mr. Phan asked about demographic breakdown and Ms. Murphy explained that in the survey, that was not done.

Mayor Tran asked the purpose of the study. Ms. Murphy said many job descriptions were woefully outdated, and needed to be brought up to date. Also it was useful to see how Milpitas compared to market in terms of pay and benefits.

Councilmember Nuñez asked the City Attorney, could the report be used for Closed Session on labor negotiations. Mr. Diaz responded, yes if the data was specific to bargaining groups.

Mr. Johnson stated staff would need direction from Council on where the City wanted the class/pay to be, overall, for example in the 50th or 75th percentile.

Councilmember Nunez wanted to understand why the fiscal impact of the staff report was listed as "none." He also requested to come back with more numbers, with known costs at the future report. He spoke of the expectation of employees to have their pay raised, when it was lower than a determined level in the survey results.

Mayor Tran thanked the Arthur Andersen consultant.

17. Resolution for Censure Policy

City Attorney Chris Diaz gave a presentation on the proposal for a censure policy for the City Council, by adoption of a resolution, to allow reprimanding of one member. This was presented in the past, but not voted upon.

Vice Mayor Grilli felt the policy should specify who would form the Ad Hoc Committee of two Councilmembers.

Councilmember Phan inquired what the implications of a censure were, if adopted. Mr. Diaz replied that sanctions could be imposed, by removing the person from a Committee and/or restricting travel.

Councilmember Barbadillo asked with regard to the Ad Hoc Committee, why there weren't some other intermediate steps, less than censure (e.g. for lesser offense). There ought to be perhaps degrees of punishment.

The City Attorney replied there could be admonishment, informal censure (reprimand) and then adopt a resolution for formal censure.

Councilmember Nuñez wondered about what happened in other cities with such a policy.

Mr. Diaz said he could look at other cities' policies, and find those that have steps within the censure policy. Staff would not want to get involved in the process Council desired to follow.

Motion: to direct the City Attorney to come back to Council with a revised censure policy with intermediate steps included, and who decided which Councilmembers would serve on the Ad Hoc Committee, and bring it back next time on consent

Motion/Second:

Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSTAIN: 1 (Tran)

When it was approaching 12:00 PM, Councilmember Nuñez said perhaps the Council could take the most important item next and then end the meeting. The City Manager responded that item no. 25 was required for action.

The Acting City Manager reported that on Thursday, October 5, the Council would schedule a special closed session meeting, so certainly they could add items for public discussion onto that agenda. By consensus, it was agreed that the meeting for Thursday, October 5 would start at 6:30 PM for all items that were not heard at this meeting along with a Closed Session matter.

- | | |
|---|---|
| 18. City Budget Process | This item was not heard. |
| 19. Contract Authority
(Ordinance No. 289.1) | This item was not heard. |
| 20. List of Council Items | This item was removed from the consent calendar but not heard. It would be continued. |

REPORTS

- | | |
|------------------------------|---|
| 21. Homeless Strategy | This item had earlier been requested to be moved to the next regular meeting agenda. |
| 22. Housing Issues | This item was removed from the consent calendar but not heard. It would be continued. |

RESOLUTIONS

- | | |
|--|---|
| 24. Commissions | This item was removed from the consent calendar but not heard. It would be continued. |
| 25. Resolution regarding
Appointment of Acting CM | Human Resources Director Tina Murphy reviewed that City Council was asked to be in compliance with PERS regulations regarding hiring Steve Pangelinan as the Acting City Manager. The action must occur at a regular Council meeting (not special) so this evening was to ratify what occurred the prior week. He could serve as the Interim City Manager while the active recruitment was open for the City Manager job. His hourly rate of pay was explained. |

Motion: to ratify the previously adopted resolution by adopting Resolution No. 8704 and approve the first amendment to the employment agreement (related to hourly pay rate)

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of:	AYES: 5
	NOES: 0

- | | |
|--|------------------------|
| REPORTS of MAYOR &
COUNCILMEMBERS | No reports were given. |
|--|------------------------|

- | | |
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| ADJOURNMENT | Mayor Tran adjourned the City Council meeting at 11:57 PM. |
|--------------------|--|

*Meeting minutes respectfully submitted by
Mary Lavelle, City Clerk*

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:	100-3750	2,920	100-162-4223	2,920
<input checked="" type="checkbox"/> Budget Appropriation				
<input type="checkbox"/> Budget Transfer				

Appropriate \$2,920 from the Senior Center Holding Account to the Senior Center Operating Budget for the City of Milpitas Community Garden program. (Staff Contact: Lynette Wilson, 408-586-3408)

Background:

The Community Garden is located on Milpitas Unified School District property (Weller School) as part of the standing Joint Use Agreement. The Garden hosts 47 individual garden plots that are 100% utilized by Milpitas residents. The Garden, as part of the City's larger Recycled Water Line conversion project, now has new use requirements requiring additional equipment for use by the gardeners. In an effort to meet these requirements and enhance the program at minimal financial cost to the gardeners, Recreation and Community Services is purchasing equipment and supplies including hoses, quick coupler keys, and wheel barrows.

Fiscal Impact:

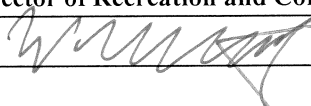
Appropriate funds from the Senior Center Holding account to the Recreation and Community Services Senior Center operating budget. This will not impact the general fund.

Recommendation(s):

Appropriate \$2,920 from the Senior Center Holding account to the Recreation and Community Services Senior Center operating budget for the City of Milpitas Community Garden program.

☒ Check if City Council Approval required.

Meeting Date: October 18, 2017

Requested by:	Lynette Wilson, Program Coordinator	Date:
Department Head:	Renee Lorentzen, Director of Recreation and Community Services	Date:
Reviewed by:	Finance Director: 	Date: 10/19/17
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

City of Milpitas

City Council Regular Meeting Dates
Tuesdays at 7:00 PM

2018

January 2 and 16
February 6 and 20
March 6 and 20
April 3 and 17
May 1 and 15
June 5 and 19
July – none
August 7 and 21
September 4 and 25
October 2 and 16
November 6 and 20
December 4 and 18

REGULAR

NUMBER: 38.830

TITLE: AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CITY’S ZONING MAP, CHANGING THE ZONING DESIGNATION OF 8.7 ACRES FROM INDUSTRIAL PARK WITH TRANSIT ORIENTED DEVELOPMENT OVERLAY (MP-TOD) TO MULTIPLE FAMILY - HIGH DENSITY WITH TRANSIT ORIENTED DEVELOPMENT OVERLAY (R3-TOD) AT 551 LUNDY PLACE, 1992 TAROB COURT, 2001 TAROB COURT AND 675 TRADE ZONE BOULEVARD

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of October 3, 2017, upon motion by Councilmember Nuñez and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on December 20, 2016, The True Life Companies submitted an application to the City of Milpitas for the approvals necessary to convert 8.7 acres across four sites within the Transit Area Specific Plan planning area from industrial to residential uses and develop a 53-unit condominium project on one of those sites. The project (the “Project”) thus consists of and requires:

- a. General Plan Amendment (GP16-0005) to change (1) the general plan land use designation assigned to 551 Lundy Place, half of 1992 Tarob Court¹, 2001 Tarob Court, and 675 Trade Zone Boulevard from Industrial Park (INP) to High-Density, Transit Oriented Residential (HD-TOR), and (2) amend General Plan Implementing Policy 2 to read as follows “Maintain and expand the total amount of land with industrial designations *where appropriate*. Do not add overlays or other designations that would allow non-industrial, employment uses within industrially designated areas” (proposed new language underlined in italics); and
- b. Specific Plan Amendment (ST16-0003) to (1) change the TASP land use designation assigned to 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court, and 675 Trade Zone Boulevard to High-Density, Transit Oriented Residential (HD-TOR); (2) amend the zoning assigned to 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court, and 675 Trade Zone Boulevard from Industrial Park with Transit Oriented Development Overlay (MP-TOD) to Multiple Family, High Density with Transit Oriented Development Overlay (R3-TOD), and (3) make text changes to the TASP; and
- c. Zoning Amendment (ZA16-0003) to rezone 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court, and 675 Trade Zone Boulevard from Industrial Park with Transit Oriented Development Overlay (MP-TOD) to Multiple Family, High Density with Transit Oriented Development Overlay (R3-TOD); and
- d. Vesting Tentative Map (MT16-00004) to subdivide the 1992 Tarob Court property into ten (10) legal parcels, establish 53 residential condominium units and related common areas, and dedicate all necessary easements;
- e. Site Development Permit (SD16-0010) to develop 1992 Tarob Court with 53 attached two- and three-bedroom townhome condominium units and associated landscaping, as well as open space, parking and circulation routes, and infrastructure improvements. Development of 1992 Tarob Court would require demolition of an existing light industrial building and related landscaping and parking; and
- f. Conditional Use Permit (UP16-0029) for 1992 Tarob Court to authorize the use of a tandem parking configuration in 17 of the townhome units, as well as to authorize the use of three (3) parking spaces on Lundy Place to meet the Project’s guest parking requirement.

WHEREAS, on June 3, 2008, the City Council of the City of Milpitas certified an Environmental Impact Report prepared to analyze the environmental impacts associated with the proposed Transit Area Specific Plan (the “TASP EIR,” State Clearinghouse No. 2006032091), and subsequently adopted the Transit Area Specific Plan (the “TASP”); and

WHEREAS, in order to conduct environmental review of the Project in accordance with the California Environmental Quality Act (“CEQA,” codified at California Public Resources Code §§ 21000, et seq., as further governed by the State CEQA Guidelines, 14 California Code of Regulations §§ 15000, et seq.), an addendum to the TASP EIR has been prepared for the Project (the “Addendum”); and

WHEREAS, per 14 C.C.R. § 15164(b), the Addendum concludes that no supplemental or subsequent EIR is required because: (a) no substantial changes are proposed in the Project which will require major revisions of the TASP EIR; (b) no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken

¹ The other half of the 1992 Tarob Court property is designated High Density, Transit Oriented Residential (HD-TOR).

which will require major revisions in the TASP EIR; and (c) no new information which was not known and could not have been known at the time the TASP EIR was certified has become available; and

WHEREAS, on August 9, 2017, the Planning Commission of the City of Milpitas held a duly-noticed public hearing to consider the Addendum and the Project, and considered evidence presented by City staff, the applicant, and other interested parties; and

WHEREAS, by adoption of Resolution No. 17-026, the Planning Commission recommended that the City Council adopt the Addendum and approve the Project in its entirety, making all necessary findings to support said recommendations, with two recommended modifications:

a. the Planning Commission did not recommend the City Council approve the use of three (3) parking spaces on Lundy Place to meet the Project's guest parking requirement; and

b. the Planning Commission recommended that the Lundy Place frontage of 1992 Tarob Court be developed in accordance with the specifications of Figure 5-9 ('New Local Streets') of the Transit Area Specific Plan; and

WHEREAS, on September 19, 2017, the City Council held a duly-noticed public hearing on the proposed action, including the Addendum, as well as the Project itself, and considered evidence presented by City staff and other interested parties; and

WHEREAS, by adoption of Resolution No. 8700 on October 3, 2017, the City Council, as the lead agency for the Project, approved and adopted the Addendum for the Project, which specifically contemplated the Zoning Ordinance amendments set forth herein, finding that it was completed in compliance with CEQA and the State CEQA Guidelines. The Addendum fully analyzed any environmental impacts associated with the actions contemplated in this Ordinance; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

The Project, including this Ordinance, has been subjected to environmental review under the California Environmental Quality Act ("CEQA") through the preparation of an Addendum to the TASP EIR. By adoption of Resolution No. 8700, the City Council has determined that an addendum is the proper environmental review document under CEQA, that the Addendum reflects the City Council's independent judgment and analysis, and that there is no substantial evidence that the Project will have a significant effect on the environment. Through the adoption of Resolution No. 8700, the City Council likewise found that, based on its independent review and consideration, the Addendum complies with the requirements of CEQA and the City Council therefore adopted the conclusions in the Addendum, as well as the Addendum itself, on the basis of the evidence and reasoning set forth therein.

SECTION 3. ZONING AMENDMENT FINDINGS – MILPITAS MUNICIPAL CODE SECTION XI-10-57.02(G)(3)

a. *The proposed amendment is consistent with the General Plan.*

By adoption of Resolution No. 8701, the City Council approved General Plan Amendment GP16-0005, which amended the general plan land use designation for 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court, and 675 Trade Zone Boulevard from Industrial Park (INP) to High-Density, Transit Oriented Residential (HD-TOR), which permits residential development at densities of 21-40 dwelling units per acre. The proposed Zoning Amendment would rezone these four properties to Multiple-Family High Density with Transit Oriented Development Overlay (R3-TOD), which would permit development at a density of up to 40 dwelling units per acre (per TASP Table 5-1: Development Standards) in keeping with the HD-TOR density requirements. Amending the zoning designation for these four parcels will thus make the zoning and general plan land use designation for the parcels consistent, as required by law.

b. The proposed amendment will not adversely affect the public health, safety and welfare.

The proposed Zoning Amendment would change the current zoning district assigned to the proposed sites (Industrial Park with Transit Oriented Development Overlay – MP-TOD) to the same land use designation of the directly adjacent properties to the south and west (Multiple Family, High Density with Transit Oriented Development Overlay - R3-TOD), as well as to the same designation of the balance of the Trade Zone/Montague sub-district (R3-TOD). As such, the proposed Zoning Amendment would significantly improve compatibility with the surrounding area, thereby improving public health, safety and welfare by removing incompatible zonings between directly adjacent properties.

SECTION 4. AMENDMENT OF THE ZONING MAP OF THE CITY OF MILPITAS

The Zoning Map of the City of Milpitas, which was adopted as part of Ordinance No. 38, enacted Chapter XI-10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code of said City, is hereby amended by rezoning 551 Lundy Place, 1992 Tarob Court, 2001 Tarob Court, and 675 Trade Zone Boulevard from Industrial Park with Transit Oriented Development Overlay (MP-TOD) to Multiple Family, High Density with Transit Oriented Development Overlay (R3-TOD), as depicted in **Exhibit 1**, which is attached hereto and incorporated herein. This Zoning Map shall be kept in uncodified form and shall be made available upon request from the Director of Planning and Neighborhood Services.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held incorrect, invalid, illegal, or unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared incorrect, invalid, illegal, or unenforceable.

SECTION 6. EFFECTIVE DATE AND POSTING





In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.

EXHIBIT '1'

AMENDED ZONING MAP



LEGEND: Zoning Ordinance Map

-  Boundary of Zoning Ordinance Map Amendment Area
-  Multiple Family High Density Transit-Oriented Residential with Transit-Oriented Development Overlay (R3-TOD)
-  Multiple Family Very High Density Transit-Oriented Residential with Transit-Oriented Development Overlay (R4-TOD)
-  Park

RESOLUTION NO. ____ / SA ____ / PFA ____

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS,
THE BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY
AND THE BOARD OF THE MILPITAS PUBLIC FINANCING AUTHORITY
APPROVING THE ADOPTION OF A DEBT MANAGEMENT POLICY**

WHEREAS, Senate Bill 1029 (SB 1029), which became effective on January 1, 2017, amended California Government Code 8855 to add certain requirements related to the issuance and administration of debt by local agencies such as the City of Milpitas (the “City”), the Successor Agency to the former Milpitas Redevelopment Agency (the “Successor Agency”) and the Milpitas Public Financing Authority (the “Authority”), including the requirement to adopt a debt policy meeting the requirements of California Government Code 8855 prior to issuing any debt; and

WHEREAS, the City Council of the City, the Board of the Successor Agency and the Board of the Authority wish at this time to approve a debt policy that is compliant with California Government Code 8855 to govern future issuances of debt by the City, the Successor Agency and the Authority, as applicable; and

NOW, THEREFORE, the City Council of the City, the Board of the Successor Agency to the former Milpitas Redevelopment Agency, and the Board of the Milpitas Public Financing Authority hereby find, determine and resolve as follows:

1. Approval of Debt Management Policy. The City Council, the Board of the Successor Agency and the Board of the Authority hereby jointly approve and adopt the Debt Management Policy in the form presented to the meeting at which this Resolution is adopted. The Debt Management Policy shall govern the issuance and administration of debt issued by the City, the Successor Agency and the Authority, all in accordance with, and subject to, the conditions set forth in such policy.

2. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk/
Successor Agency Secretary/
Public Financing Authority Secretary

Rich Tran, Mayor/
Successor Agency Chair/
Public Financing Authority Chair

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney/
Successor Agency Counsel/
Public Financing Authority Counsel

**CITY OF MILPITAS
SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY
MILPITAS PUBLIC FINANCING AUTHORITY**

DEBT MANAGEMENT POLICY

Effective October 17, 2017

This Debt Management Policy (the “Debt Policy”) establishes the parameters within which debt may be issued and administered by the City of Milpitas (the “City”), the Successor Agency to the former Milpitas Redevelopment Agency and the Milpitas Public Financing Authority (collectively, the “Covered Entities”). Additionally, these policies apply to debt issued by a Covered Entity on behalf of assessment district, community facilities district, or other special district, and conduit-type financing by a Covered Entity for multifamily housing or industrial development projects.

The Debt Policy may be utilized by staff of the Covered Entities with the discretion to deviate as determined appropriate by the City Manager or Director of Financial Services (or their equivalent positions), and may be amended by the governing board of the applicable Covered Entity as it deems appropriate from time to time in the prudent management of the debt and capital financing needs of the Covered Entities.

1. Findings

This Debt Policy is intended to comply with Government Code Section 8855(i), effective on January 1, 2017, and shall govern all debt undertaken by a Covered Entity.

The Covered Entities hereby recognize that a fiscally prudent debt policy is required in order to:

- Maintain the Covered Entities’ sound financial position.
- Ensure the Covered Entities have the flexibility to respond to changes in future service priorities, revenue levels, and operating expenses.
- Protect the Covered Entities’ credit-worthiness.
- Ensure that all debt is structured in order to protect both current and future taxpayers, ratepayers and constituents of the Covered Entities.
- Ensure that the Covered Entities’ debt is consistent with their planning goals and objectives and capital improvement program or budget, as applicable.

2. Policies

A. Purposes For Which Debt May Be Issued

(i) Long-Term Debt. Long-term debt may be issued to finance the construction, acquisition, and rehabilitation of capital improvements and facilities, equipment and land to be owned and operated by the City.

(a) Long-term debt financings are appropriate when the following conditions exist:

- When the project to be financed is necessary to provide basic services.
- When the project to be financed will provide benefit to constituents over multiple years.
- When total debt does not constitute an unreasonable burden to the Covered Entities and the City's taxpayers and/or ratepayers, as applicable.
- When the debt is used to refinance outstanding debt in order to produce debt service savings or to realize the benefits of a debt restructuring.

(b) Long-term debt financings will not generally be considered appropriate for current operating expenses and routine maintenance expenses.

(c) The Covered Entities may use long-term debt financings subject to the following conditions:

- The project to be financed must be approved by the governing board of the Covered Entity.
- The weighted average maturity of the debt (or the portion of the debt allocated to the project) will not exceed the average useful life of the project to be financed by more than 20%.
- The Covered Entity estimates that sufficient revenues will be available to service the debt through its maturity.
- The Covered Entity determines that the issuance of the debt will comply with the applicable state and federal law.

(ii) Short-term debt. Short-term debt may be issued to provide financing for the Covered Entities' operational cash flows in order to maintain a steady and even cash flow balance. Short-term debt may also be used to finance short-lived capital projects; for example, the Covered Entities may undertake lease-purchase financing for equipment.

(iii) Financings on Behalf of Other Entities. The Covered Entities may also find it beneficial to issue debt on behalf of other governmental agencies or private third parties in order to further the public purposes of Covered Entities. In such cases, the Covered Entities shall take reasonable steps to confirm the financial feasibility of the project to be financed and the financial solvency of any borrower and that the issuance of such debt is consistent with the policies set forth herein.

B. Types of Debt

The following types of debt are allowable under this Debt Policy:

- General obligation bonds (GO Bonds)
- Bond or grant anticipation notes

- Lease revenue bonds, certificates of participation (COPs) and lease-purchase transactions
- Other revenue bonds and COPs
- Tax and revenue anticipation notes (TRANs)
- Land-secured financings, such as special tax revenue bonds issued under the Mello-Roos Community Facilities Act of 1982, as amended, and limited obligation bonds issued under applicable assessment statutes
- Tax increment financing to the extent permitted under State law
- Conduit financings, such as financings for affordable rental housing and qualified 501(c)(3) organizations

The governing body may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment of this Debt Policy.

C. Relationship of Debt to Capital Improvement Program and Budget

The City and Covered Entities are committed to long-term capital planning. The City and Covered Entities intend to issue debt for the purposes stated in this Debt Policy and to implement policy decisions incorporated in the capital budget and the capital improvement plan.

The City and Covered Entities shall strive to fund the upkeep and maintenance of its infrastructure and facilities due to normal wear and tear through the expenditure of available operating revenues. The City and Covered Entities shall seek to avoid the use of debt to fund infrastructure and facilities improvements that are the result of normal wear and tear.

The Covered Entities shall integrate their debt issuances with the goals of the capital improvement program by timing the issuance of debt to ensure that projects are available when needed in furtherance of their public purposes.

The Covered Entities shall seek to issue debt in a timely manner to avoid having to make unplanned expenditures for capital improvements or equipment from its general fund.

D. Policy Goals Related to Planning Goals and Objectives

The City and Covered Entities are committed to long-term financial planning, maintaining appropriate reserves levels and employing prudent practices in governance, management and budget administration. The Covered Entities intend to issue debt for the purposes stated in this Debt Policy and to implement policy decisions incorporated in the annual operations budget.

It is a policy goal of the City and the Covered Entities to protect taxpayers, ratepayers (if applicable) and constituents by utilizing conservative financing methods and techniques so as to obtain the highest practical credit ratings (if applicable) and the lowest practical borrowing costs.

The City and the Covered Entities will comply with applicable state and federal law as it pertains to the maximum term of debt and the procedures for levying and imposing any related

taxes, assessments, rates and charges.

When refinancing debt, it shall be the policy goal of the Covered Entities to realize, whenever possible, and subject to any overriding non-financial policy considerations, minimum net present value debt service savings equal to or greater than 3.0%.

E. Internal Control Procedures

When issuing debt, in addition to complying with the terms of this Debt Policy, the Covered Entities shall comply with any other applicable policies regarding initial bond disclosure, continuing disclosure, post-issuance compliance, and investment of bond proceeds.

Without limiting the foregoing, the Covered Entities will periodically review the requirements of and will remain in compliance with the following:

- Any continuing disclosure undertakings entered into by the Covered Entities in accordance with SEC Rule 15c2-12.
- Any federal tax compliance requirements, including, without limitation, arbitrage and rebate compliance.
- Investment policies as they relate to the use and investment of bond proceeds.

Proceeds of debt will be held either (a) by a third-party trustee or fiscal agent, which will disburse such proceeds to or upon the order of the Covered Entities upon the submission of one or more written requisitions by the City Manager or Director of Financial Services (or their equivalent positions), or his or her written designee, or (b) by the Covered Entity, to be held and accounted for in a separate fund or account, the expenditure of which will be carefully documented by the Covered Entity.

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
THE REFINANCING OF WASTEWATER SYSTEM OBLIGATIONS, APPOINTING
FINANCING TEAM, AND APPROVING RELATED MATTERS**

WHEREAS, the City of Milpitas (the “City”) owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the “Wastewater System”); and

WHEREAS, the City previously entered into an Installment Sale Agreement, dated as of December 1, 2006, between the Milpitas Public Financing Authority (the “Authority”) and the City (the “2006 Agreement”) for the purpose of financing certain capital projects that are part of the Wastewater System; and

WHEREAS, in connection with the execution of the 2006 Agreement, the Authority caused to be executed and delivered Certificates of Participation 2006 Series A (City of Milpitas Sewer Financing), in the initial principal amount of \$9,535,000 (the “2006 Certificates”); and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City to refinance the 2006 Agreement, thereby refunding the 2006 Certificates, via the issuance, in one or more series, of wastewater revenue refunding bonds (the “Bonds”); and

WHEREAS, the City Council desires to authorize and direct City staff to enter into services contracts with consultants to the City to assist with the refinancing of the 2006 Certificates via the issuance of the Bonds, including the drafting of legal and disclosure documents to be approved by the City Council at a subsequent meeting; and

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. Authorization of Refinancing Transaction. The City Council hereby authorizes and directs the City Manager and Director of Financial Services (each, an “Authorized Officer”) to proceed with the refinancing of the 2006 Certificates via the issuance of the Bonds, in consultation with consultants to be hired by the City pursuant to this Resolution. The refinancing of the 2006 Certificates shall be effectuated via the public offering of the Bonds and negotiated sale to Stifel, Nicolaus & Company, Incorporated, as underwriter. The City Council finds that the sale of Bonds through a negotiated sale will provide greater flexibility in choosing the date and timing of the sale, more flexibility in the structure of the Bonds, and greater expected cost savings.

The form of indenture of trust pursuant to which the Bonds will be issued, the bond purchase agreement pursuant to which the Bonds will be purchased by the underwriter, and the preliminary official statement pursuant to which the Bonds will be offered for sale to the public will all be approved at a subsequent meeting of the City Council.

The Bonds shall be issued in accordance with the Debt Management Policy previously adopted by the City.

2. Professional Services. The Authorized Officers are hereby authorized to retain, in connection with the issuance of the Bonds, the firm of Fieldman, Rolapp & Associates, Inc., as municipal advisor, and the firm of Jones Hall, A Professional Law Corporation, as bond counsel and disclosure

counsel. The City Council hereby authorizes the Authorized Officers, each acting alone, to execute agreements for services on behalf of the City with both such firms.

3. Official Actions. Whenever in this Resolution any officer of the City is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

4. Effective Date. This Resolution shall take effect from and after the date of approval and adoption thereof.

PASSED AND ADOPTED this ____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

AGREEMENT FOR LEGAL SERVICES

**BY AND BETWEEN THE CITY OF MILPITAS
AND JONES HALL, A PROFESSIONAL
LAW CORPORATION, FOR BOND COUNSEL AND
DISCLOSURE COUNSEL SERVICES IN CONNECTION WITH
WASTEWATER REVENUE REFUNDING BONDS**

This AGREEMENT FOR LEGAL SERVICES dated this ____ day of October 2017, is between the CITY OF MILPITAS (hereinafter referred to as "City"), and JONES HALL, A PROFESSIONAL LAW CORPORATION (hereinafter referred to as "Attorneys"). City and Attorneys may be jointly referred to herein as "parties."

WITNESSETH:

WHEREAS, the City of Milpitas is proceeding to authorize the issuance of long-term bonds (the "Bonds") for the purpose of refunding certain outstanding certificates of participation relating to the City's wastewater enterprise (the "Enterprise"); and

WHEREAS, in connection with the drafting of the documents and resolutions required to accomplish the authorization and issuance of the Bonds, the City requires the advice and assistance of bond counsel and disclosure counsel; and

WHEREAS, Attorneys are qualified by training and experience to perform the services of bond counsel and disclosure counsel and are willing to provide such services under the terms set forth herein;

NOW, THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. Identification of Client.

- 1.1. Attorneys shall represent the City as Bond Counsel and Disclosure Counsel in connection with the proceedings for the authorization, issuance, and sale of the Bonds. Attorneys will not represent and will owe no duties to, any other party, including but not limited to a financial advisor, trustee, bond insurer and underwriter of the Bonds.
- 1.2. Attorneys assume that all other parties involved in the financing will retain such counsel, as they deem necessary and appropriate to represent their interests in this transaction. Attorneys further assume that all other parties understand that in this transaction Attorneys represent only the City, Attorneys are not counsel to any other party, and Attorneys are not acting as an intermediary among the parties. Attorneys' services as bond counsel and disclosure counsel are limited to those contracted for in this Agreement; the City's execution of this Agreement will constitute an acknowledgment of those limitations. Attorneys' representation of the City will not affect, however, our responsibility to render an objective final legal opinion.

2. Duties of Attorneys as Bond Counsel.

- 2.1. Attorneys shall do, carry out and perform all of the following Bond Counsel services as are necessary for the issuance and sale of each series of the Bonds:

- 2.1.1. Consultation and cooperation with attorneys, financing consultants and other consultants, underwriters, staff and employees of the City, and assisting such consultants, underwriters, staff and employees in the formulation of a coordinated financial and legal Bond issuance by the City.
- 2.1.2. Preparation of all legal proceedings for the authorization, issuance and delivery of Bonds by the City; including preparation of resolutions authorizing the issuance of such Bonds, fixing the date, denominations, numbers, maturity and interest rates, providing the form of the Bonds and authorizing their execution, authentication and registration; certifying the terms and conditions upon which the same are to be issued; providing for the setting up of special funds for the disposition of proceeds of the sale of the Bonds and providing all other details in connection therewith, including special covenants and clauses for the protection of the interests of the Bondholders; preparation of the resolution selling all or any part of the authorized Bond issue; preparation of all documents required for Bond delivery and supervising such delivery; preparation of all other proceedings incidental to or in connection with the issuance, sale and delivery of the Bonds.
- 2.1.3. Upon completion of proceedings to the satisfaction of Attorneys, providing a legal opinion, as traditionally issued by Bond Counsel and satisfactory in form and content to the City Attorney and other parties to the transaction, approving in all regards the legality of all proceedings for the authorization, issuance and delivery of Bonds, which opinion shall be addressed to the City and any other party so requiring and shall inure to the benefit of the purchasers of the Bonds.
- 2.1.4. Supervising the Bond closing to ensure that all closing conditions as set forth in said purchase agreement have been satisfied.
- 2.1.5. Any and all legal consultation requested by the City concerning the Bonds.
- 2.1.6. Such other and further services as are normally performed by Bond Counsel in connection with the issuance of bonds or obligations of a similar character to the Bonds.

3. Duties of Attorneys as Disclosure Counsel.

- 3.1. In addition to their duties as Bond Counsel to the City, Attorneys shall do, carry out and perform all of the following services as Disclosure Counsel to the City in connection with the issuance of the Bonds:
 - 3.1.1. Participating in the preparation of the Official Statement by consulting with representatives of the City, the Enterprise, the City's municipal advisor, the underwriter, and others, gathering information about the Enterprise and the City for disclosure in the Official Statement, and having primary responsibility for drafting the Official Statement.
 - 3.1.2. If requested, drafting a purchase agreement between the City and the underwriter of the Bonds, under which the underwriter commits to purchase the Bonds from the City and specifying the final maturities of the Bonds, interest rate and redemption provisions, and conditions for the closing of the Bond issue.
 - 3.1.3. Rendering an opinion to the City and the underwriter of the Bonds stating that based upon Attorney's participation in the preparation of the Official Statement, nothing

has come to their attention to lead them to believe that the Official Statement (except for any financial statements and the financial and statistical data or forecasts, numbers, charts, estimates, projections, assumptions or expressions of opinion included therein, and The Depository Trust Company and its book-entry system and information in the Appendices, as to which Attorneys are not required to express a view) as of the date of the Official Statement or the date of closing of the Bonds contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

3.1.4. Such additional legal services as are customarily rendered by disclosure counsel on comparable financing transactions.

4. Compensation.

4.1. Bond Counsel Services. For the services of Attorneys listed in Section 2 in connection with Bond Counsel services rendered for the issuance of the Bonds, the City will pay Attorneys fee based on the following formula:

4.1.1. One and one-half percent (1-1/2%) of the first \$1,000,000.00 of par amount of the Bonds (with a minimum of \$25,000);

4.1.2. One-half of one percent (1/2%) of the next \$5,000,000.00 of par amount of the Bonds (if and to the extent applicable);

4.1.3. One-quarter of one percent (1/4%) of the next \$15,000,000.00 of par amount of the Bonds (if and to the extent applicable); and

One-eighth of one percent (1/8%) of Bonds in excess of \$16,000,000.00 par amount of the Bonds (if and to the extent applicable).

4.2. For purposes of the above-formula, the premium paid by the purchaser of the Bonds will be treated as part of the par amount of the Bonds.

4.3. Disclosure Counsel Services. For the services of Attorneys listed in Section 2 as Disclosure Counsel in connection with the issuance of each series of Bonds, the City will pay Attorneys a flat fee equal to Thirty-Two Thousand Five Hundred Dollars and Zero Cents (\$32,500).

4.4. Expense Recovery. In addition to the foregoing fees, Attorneys will be reimbursed in an amount not to exceed Three Thousand Dollars and Zero Cents (\$3,000.00) for direct out-of-pocket expenses for travel outside the State of California (with the prior approval of the City), messenger and delivery services, court filing fees, costs of legal publication, photocopying and preparation of official transcripts of the proceedings.

5. Maintenance of Records.

5.1. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Attorneys and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City

6. Responsibilities of the City.

6.1. The City shall cooperate with Attorneys and shall furnish Attorneys with certified copies of all proceedings taken by the City, or other deemed necessary by Attorneys to render an opinion upon the validity of such proceedings. All costs and expenses incurred incidental to the actual issuance and delivery of Bonds, including the cost and expense of preparing

certified copies of proceedings required by Attorneys in connection with the issuance of the Bonds, the cost of preparing the Bonds for execution and delivery, all printing costs and publication costs, and any other expenses incurred in connection with the issuance of Bonds, shall be paid by the City.

7. Independent Contractor.

7.1. Attorneys will act as an independent contractor in performing the services required under this Agreement, and under no circumstances shall Attorneys be considered an agent, partner, or employee of the City.

8. Delays in Performance.

8.1. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

8.2. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement

9. Liability Insurance Costs of Regulatory Agency Investigations.

9.1. Attorneys must maintain at their own expense at all times during the term of this Agreement policies of insurance, acceptable to the City, covering its workers' compensation injuries, public liability and professional liability meeting at a minimum the requirements of Exhibit A – Insurance Requirements - General. In the event any investigation, inquiry or other action is instituted by the Securities and Exchange Commission, the Internal Revenue Service or other governmental regulatory agency into the Certificates under federal securities law or federal tax law, the City and Attorneys shall meet and confer to discuss the extent to which it is appropriate for Attorneys to represent the common interests of the City and Attorneys in responding to such investigation, inquiry or other action, and the extent to which the cost thereof shall be borne by Attorneys.

10. Assignment.

10.1. Attorneys may not assign their rights or delegate their obligations under this Agreement, in whole or in part, except with the prior written consent of the City.

11. Conflicts; Prospective Consent.

11.1. Attorneys represent many political subdivisions, investment banking firms and financial advisory firms. It is possible that during the time that Attorneys are representing the City, Attorneys will also be representing, on other transactions, the investment banking firm working with the City in connection with the Bonds. Attorneys do not believe such representation, if it occurs, will adversely affect Attorneys' ability to represent the City as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other City will be relevant to any aspect of the issuance

of the Bonds. Execution of this Agreement will signify the City's consent to Attorneys' representation of others consistent with the circumstances described in this paragraph.

12. Non-Waiver.

- 12.1. None of the provisions of this Agreement shall be considered waived by either party unless such waiver is specifically specified in writing.

13. Severability.

- 13.1. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

14. Laws and Venue.

- 14.1. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California

15. Termination of Agreement.

- 15.1. Termination by City. This Agreement may be terminated at any time by the City with or without cause upon written notice to Attorneys.
- 15.2. Termination by Attorneys. This Agreement may be terminated by Attorneys upon fifteen (15) days' written notice to City if City fails to follow written legal advice given by Attorneys.
- 15.3. Termination upon Issuance of Bonds. This Agreement shall terminate upon the issuance of the Bonds.
- 15.4. Consequences of Termination. In the event of termination, all finished and unfinished documents shall at the option of the City become its property and shall be delivered to the City by Attorneys.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Attorneys have executed this Agreement as of the date first above written.

APPROVED BY:

CITY OF MILPITAS
A Municipal Corporation

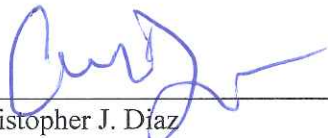
JONES HALL, A PROFESSIONAL
LAW CORPORATION
A California Corporation

Steve J. Pangelinan
Acting City Manager

Name: _____

Title: _____

APPROVED AS TO FORM:



Christopher J. Diaz
City Attorney

APPROVED AS TO CONTENT:



Will Fuentes
Director of Financial Services
Project Manager



EXHIBIT A - INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on their subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by the Contractor or by any subcontractor under the Contractor who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of the Contractor's employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

(X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).

(X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

(X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(X) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.

() Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:

Contractor must maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal (Including operations, injury and property damage. If Commercial General Liability products and completed operations, as applicable.) insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation Statutory
Employer's Liability: \$1,000,000 each accident
\$1,000,000 disease-policy limit

\$1,000,000 disease-each employee

4. Professional Liability or
Errors & Omissions \$1,000,000 each occurrence
Liability: \$1,000,000 policy aggregate

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Milpitas, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy. General Liability endorsements for "Scheduled Person or Organization" and "Complete Operations" are required
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. The Insurance Company agrees to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to:

**City of Milpitas
Attention: Purchasing Division
455 E. Calaveras Boulevard
Milpitas, California 95035-5411**

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement



**AMENDMENT NO. 1 TO THE AGREEMENT
WITH
FIELDMAN, ROLAPP & ASSOCIATES, INC
FOR
FINANCIAL ADVISOR SERVICES**

This Amendment No. 1 is entered into this ____ day of October, 2017, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and Fieldman, Rolapp & Associates, Inc. (hereinafter referred to as "Consultant"). City and Vendor may be jointly referred to herein as "parties."

RECITALS

WHEREAS, on December 15, 2015, the parties entered into the Agreement for Financial Advisor Services to assist the City with the funding of water system improvements; and

WHEREAS the Agreement specifies that the City may amend the Agreement to expand the Scope of Services to assist the City with the structuring or planning of any debt issue or financing program; and

WHEREAS the parties now wish to extend the term of the contract through December 14, 2020 to allow the parties to refund the City's 2006 Sewer COP Bond and consider other debt issuances and financing programs as needed; and

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. **Section 1 - Financial Advisory Services** is hereby deleted in its entirety and replaced with the following:

Section 1 – Municipal Advisory Services.

1.01 As directed by the City, Consultant will provide services in connection with the Project as such Services are fully described in **Exhibit A** attached to this Agreement. Consultant is engaged in an expert financial advisory capacity to the City only. It is expressly understood that the Services rendered hereunder are rendered solely to the City. Consultant does not undertake any responsibility to review disclosure documents on behalf of owners or beneficial owners of bonds or debt which may arise from the Consultant's work hereunder.

1.02 As directed the City, Consultant shall provide analysis of future funding alternatives on an hourly basis as fully described in Exhibit B.

2. **Section 2 - Additional Requested Services** is hereby deleted in its entirety and replaced with the following:

Section 2 – Additional Requested Services (Amendment of Services).

2.01 The City may request that Consultant provide additional services beyond the scope of those referenced in Section 1 above and specifically listed in **Exhibit A** to this Agreement.

3. **Section 3 – Compensation** is hereby deleted in its entirety and replaced with the following:

Section 3 – Compensation.

3.01 For Consultant's performance of Services as described in this Agreement, the Consultant's compensation will be as provided in Exhibit B attached to this Agreement,

3.02 Payment of Consultant's expenses shall be made at the time and in the form as provided for in Exhibit B to this Agreement.

3.03 Unless otherwise specified, payment of Consultant's compensation and expenses is due thirty (30) days after submission of Consultant's invoice for Services.

3.04 In the event City abandons the Services of the Consultant prior to completion of Consultant's work, Consultant shall be compensated for Services performed to the point of abandonment at the hourly rates specified in Exhibit B, subject to a maximum fee of \$0. An act of abandonment shall be deemed to have occurred when no action has been taken by the City relative to the services of the Consultant for a period of three (3) months from the date of the initial performance of a service, and there has been a written notification to the Consultant of an abandonment of the Project by the City.

3.05 The schedule of Consultant fees set forth in this Agreement and **Exhibit B** is guaranteed by Consultant for a period of twelve (12) months from the date of this Agreement or any subsequent Amendments to this Agreement.

4. **Section 4 – Personnel** is hereby deleted in its entirety and replaced with the following:

Amendment No. 1: Fieldman, Rolapp & Associates
Financial Advisor Services

Section 4 – Personnel.

Consultant has, or will secure, all personnel required to perform the Services under this Agreement. Consultant shall make available other qualified personnel of the firm as may be required to complete Consultant's services. The City has the right to approve or disapprove any proposed changes in Consultant's staff providing service to the City. The City and Consultant agree that such personnel are employees only of Consultant and shall not be considered to be employees of the City in any way whatsoever.

5. **Section 5 – Term of Agreement** is deleted in its entirety and replaced with the following:

Section 5 – Term of Agreement.

This Agreement shall continue in full force and effect for a period of sixty (60) months from the date hereof or until the Services with respect to the Project have been completed, if earlier, unless terminated by either party by not less than thirty (30) days written notice to the other party except that the Agreement shall continue in full force and effect until completion of the Services or until an abandonment shall have occurred as described in Section 3.04 hereof. This Agreement may be extended from time to time as agreed by the City and the Consultant pursuant to Section 6.

6. **Section 6 – Modification** is deleted in its entirety and replaced with the following:

Section 6 – Modification.

This Agreement contains the entire agreement of the parties. It may be amended in whole or in part from time to time by mutual consent of the parties; provided that the Disclosures (as defined herein) required by Section 16 will be updated by the Consultant as required by law. This shall not prohibit the City and Consultant from entering into separate agreements for other services.

7. **Section 8 – Assignment** is deleted in its entirety and replaced with the following:

Section 8 – Assignment.

The rights and obligations of the City under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the

City. This Agreement may not be assigned by the Consultant without the consent of the City except for compensation due Consultant.

8. **Section 12 – Insurance** is hereby deleted in its entirety and replaced with the following:

Section 12 – Insurance.

12.01 Consultant shall maintain insurance during the term of this Agreement as dictated in **Exhibit D - Insurance Requirements - General**.

12.02 Consultant, at its own expense, shall obtain and maintain insurance as dictated in **Exhibit D – Insurance Requirements - General** at all times during the term of this Agreement. Such insurance must be written with a Best Guide "A" rated or higher insurance carrier admitted to write insurance in the state where the work is located

9. **Section 13 – Permits/Licenses** is hereby deleted in its entirety and replaced with the following:

Section 13 – Permits/Licenses.

The Consultant shall obtain any permits or licenses, as may be required for it to complete the Services required under this Agreement

10. **Section 15 – Arbitration Requirement** is hereby deleted in its entirety and replaced with the following:

Section 15 Choice of Law.

The validity, interpretation and construction of this Agreement and of each part hereof shall be governed by the laws of the State of California. Venue for any lawsuit concerning this Agreement is Santa Clara County, California.

11. **Section 16 - Conflict of Interest** is hereby deleted in its entirety and replaced with the following:

Section 16 Conflict of Interest and Other Required Disclosures.

Consultant covenants and agrees to provide to the City disclosures of material conflicts of interest and certain legal or disciplinary events required by Municipal Securities Rulemaking Board Rule G-42 (the “Disclosures”). The Disclosures, and each delivery thereof, as provided from time to time, shall be incorporated by reference as of the date thereof into this Agreement to the same extent as if set forth herein. The initial Disclosures are as set forth in Exhibit C to this Agreement.

12. **Exhibit A – Scope of Services** is hereby deleted in its entirety and replaced, attached hereto and incorporated by reference herein.
13. **Exhibit B - Compensation and Expenses** is hereby deleted in its entirety and replaced, attached hereto and incorporated by reference herein.
14. **Exhibit C – MSRB Rule G-42** is hereby added to the Agreement, attached hereto and incorporated by reference herein
15. **Exhibit D - Insurance Requirements – General** is hereby added to the Agreement, attached hereto and incorporated by reference herein.
16. All other provisions of the amended Agreement not modified by this Amendment No. 1 shall remain in full force and effect.

This Amendment is executed as of the date first written page one.

[SIGNATURES ON FOLLOWING PAGE]

APPROVED BY:

CITY OF MILPITAS
Municipal Corporation

FIELDMAN, ROLAPP &
ASSOCIATES, INC.
A California Corporation

Steve J. Pangelinan
Acting City Manager

James V. Fabian
Principal

APPROVED AS TO FORM:



Christopher J. Diaz
City Attorney

APPROVED AS TO CONTENT:



Will Fuentes
Director of Financial Services
Project Manager

EXHIBIT A

Scope of Services

A. General Services.

The Consultant shall perform all the duties and services described in Section 1 of this Agreement and shall provide such other services as it deems necessary or advisable to accomplish the Project, consistent with the standards and practice of professional financial advisors prevailing at the time such services are rendered to the City.

The City may, with the concurrence of Consultant, expand this Agreement to include Additional Services not specifically identified within the terms of this Agreement. Any Additional Services may be described in an addendum to this Exhibit A and are subject to compensation described in Exhibit B to this Agreement.

B. Transaction Services.

The Consultant shall assume primary responsibility for assisting the City in coordinating the planning and execution of each debt issue relating to the Project. Insofar as the Consultant is providing Services which are rendered only to the City, the overall coordination of the financing shall be such as to minimize the costs of the transaction coincident with maximizing the City's financing flexibility and capital market access. The Consultant's proposed debt issuance Services may include the following:

- Develop the Financing Schedule
- Monitor the Transaction Process
- Review the Official Statement, both preliminary and final
- Procure and Coordinate Additional Service Providers
- Provide Financial Advice to the City Related to Financing Documents
- Compute Sizing and Design Structure of the Debt Issue
- Plan and Schedule Rating Agency Presentation
- Conduct Credit Enhancement Procurement and Evaluation
- Conduct Market Analysis and Evaluate Timing of Market Entry
- Recommend Award of Debt Issuance
- Provide Pre-Closing and Closing Assistance

Specifically, Consultant will:

1. Develop the Financing Timetable.

The Consultant shall take the lead role in preparing a schedule and detailed description of the interconnected responsibilities of each team member and update this schedule, with refinements, as necessary, as the work progresses.

2. Monitor the Transaction Process.

The Consultant shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue relating to the Project. The Consultant shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. The Consultant shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.

3. Review the Official Statement.

The Consultant shall review the official statement for each debt issue relating to the Project to insure that the City's official statement is compiled in a manner consistent with industry standards.

4. Procure and Coordinate Additional Service Providers.

The Consultant may act as City's representative in procuring the services of financial printers for the official statement and related documents, and for the printing of any securities. In addition, the Consultant may act as the City's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if the City directs.

5. Provide Financial Advice to the City Relating to Financing Documents.

The Consultant shall assist the managing underwriters, bond counsel and/or other legal advisors in the review of the respective financing resolutions, notices and other legal documents. In this regard, the Consultant shall monitor document preparation for a consistent and accurate presentation of the recommended business terms and financing structure of each debt issue relating to the Project, it being specifically understood however that the Consultant's services shall in no manner be construed as the Consultant engaging in the practice of law.

6. Compute Sizing and Design Structure of Debt Issue.

The Consultant shall work with the City's staff bond counsel and other professionals of the City to design a financing structure for each debt issue relating to the Project that is consistent with the City's objectives, that coordinates each transaction with outstanding issues and that reflects current conditions in the capital markets.

7. Plan and Schedule Rating Agency Presentation.

The Consultant shall develop a plan for presenting the financing program to the rating agencies. The Consultant shall schedule rating agency visits, if appropriate, to assure the appropriate and most knowledgeable rating agency personnel are available for the presentation and will develop presentation materials and assist the City officials in preparing for the presentations.

8. Conduct Credit Enhancement Evaluation and Procurement.

Upon the City's direction, the Consultant will initiate discussions with bond insurers, letter of credit providers and vendors of other forms of credit enhancements to determine the availability of and cost benefit of securing financing credit support.

9. Conduct Market Analysis and Evaluate Timing of Market Entry.

The Consultant shall provide summaries of current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the City's proposed financing.

Negotiated Sales.

In the case of a negotiated sale of debt, the Consultant shall perform an evaluation of market conditions preceding the negotiation of the terms of the sale of debt and will assist the City with the negotiation of final issue structure, interest rates, interest cost, reoffering terms and gross underwriting spread and provide a recommendation on acceptance or rejection of the offer to purchase the debt. This assistance and evaluation will focus on the following areas as determinants of interest cost:

- Size of financing
- Sources and uses of funds
- Terms and maturities of the debt issue
- Review of the rating in pricing of the debt issue
- Investment of debt issue proceeds
- Distribution mix among institutional and retail purchasers
- Interest rate, reoffering terms and underwriting discount with comparable issues

- Redemption provisions

10. Recommend Award of Debt Issuance.

Based upon activities outlined in Task 9 above, the Consultant will recommend accepting or rejecting offers to purchase the debt issue. If the City elects to award the debt issue, the Consultant will instruct all parties and help facilitate the actions required to formally consummate the award.

11. Provide Pre-Closing and Closing Activities.

The Consultant shall assist in arranging for the closing of each financing. The Consultant shall assist counsel in assuming responsibility for such arrangements as they are required, including arranging for or monitoring the progress of bond printing, qualification of issues for book-entry status, signing and final delivery of the securities and settlement of the costs of issuance.

EXHIBIT B
Compensation and Expenses

Part 1 Transaction Based Compensation

For Services referenced in Section 1 of this Agreement, the Consultant will be compensated Forty Thousand Dollars and Zero Cents (\$40,000) regardless of the transaction size.

Payment of compensation earned by Consultant pursuant to this Part 1 shall be contingent on, and payable at the closing of the debt issue(s) undertaken to finance the Project.

Part 2 Hourly Compensation

For Services and Additional Services referenced in Section 1 and Section 2 of this Agreement, including Services performed prior to the adoption by City Council, the Consultant will be compensated at the then current hourly rates. The table below reflects the rates in effect as of the date of execution of this Agreement.

<u>Personnel</u>	<u>Hourly Rate</u>
Executive Officer	\$345.00
Principal	\$315.00
Principal/Senior Vice President	\$295.00
Vice President.....	\$245.00
Assistant Vice President	\$210.00
Senior Associate.....	\$165.00
Associate	\$140.00
Analyst.....	\$95.00
Administrative Assistant	\$75.00
Clerical.....	\$45.00

Hourly Compensation will be billed on a monthly basis.

Expenses

Expenses will be billed for separately and will cover, among other things, travel, lodging, subsistence, overnight courier, conference calls, and computer charges. Advances made on behalf of the City for costs of preparing, printing or distributing disclosure materials or related matter whether by postal services or electronic means, may also be billed through to the City upon prior authorization. Additionally, a surcharge of six percent (6%) of the compensation amount is added to verifiable out-of-pocket costs for recovery of costs such as telephone, postage, document reproduction and the like. Expenses will be capped at Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00).

Limiting Terms and Conditions

The above compensation is based on completion of work orders within six months of the City's authorization to proceed, and assumes that the City will provide all necessary information in a timely manner.

The fee referenced in Part 1 above, presumes attendance at up to 6 meetings in the City's offices or such other location within a 25-mile radius of the City place of business as the City may designate. Preparation for, and attendance at City Council meetings on any basis other than "by appointment" may be charged at our normal hourly rates referenced in Part 2 above.

Abandonment

If, once commenced, the services of the Consultant are terminated prior to completion of our final report for any reason, the Consultant will be compensated for professional services and reimbursed for expenses incurred through the time of receive notification of such termination at the standard hourly rates shown above, subject to a maximum charge of Zero Dollars and Zero Cents (\$0.00).

EXHIBIT C
MSRB Rule G-42

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to all material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. With respect to all aspects of the relationship between Consultant and the City, Consultant adheres to its fiduciary duty to the City, which includes a duty of loyalty to the City in performing all municipal advisory activities for the City. The duty of loyalty obligates Consultant to deal honestly and with the utmost good faith with the City and to act in the City's best interest without regard to any interest Consultant has or may have. Consultant has a wide range of clients so our success and profitability are not dependent on maximizing short-term revenue generated from individual recommendations to our clients but is instead dependent on long-term profitability based on a foundation of integrity, quality and adherence to our fiduciary duty. Furthermore, Consultant's supervisory structure provides strong safeguards against individual representatives of Consultant violating their duty due to personal interests.

Consultant makes the following representations to the City with regard to the Services:

- A. Other than the compensation described in the Agreement, we have no other interest, direct or indirect, that would interfere with or impair in any matter or degree the performance of our obligations. During our work on the Services, we do not intend to acquire or obtain any such interest, direct or indirect. If any such interest is acquired or obtained, we will immediately advise the City.
- B. We have not provided any gift or consideration to any officer, employee or agent of the City to either obtain the Agreement or any assignment from the City, including the Services. Neither our firm, nor its officers or employees will provide any such gift or consideration to any officer, employee or agent of the City to influence decisions with regard the Services or our obligations under the Agreement.
- C. Our compensation for the Services is a flat fee of Forty Thousand Dollars and Zero Cents (\$40,000.00) and is contingent on the completion of the Project. While this form of compensation is customary in the market for financial services to municipal entities, this may present conflict of interest as we would have an incentive to recommend to the City the Project even if it is unnecessary or provides insufficient benefit or advise the City to increase the size of the Project. This potential conflict is mitigated by Consultant's fiduciary duty to the City.
- D. At the present time, Consultant has determined, after exercising reasonable diligence, that it has no known material conflicts of interest that would

impair its ability to provide advice in accordance with its fiduciary duty to municipal entity clients such as the City. To the extent any such material conflicts of interest arise after the date of this disclosure, Consultant will provide information with respect to such conflicts.

Information Regarding Legal Events and Disciplinary Actions

MSRB Rule G-42 requires that municipal advisors provide their clients disclosures of legal or disciplinary events material to the evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Consultant sets out required disclosures and related information below:

- A. There are no legal or disciplinary events material to the City's evaluation of Consultant or the integrity of Consultant's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I with the Securities and Exchange Commission (the "SEC").

Consultant's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at:

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001612429>



EXHIBIT D - INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on their subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by the Contractor or by any subcontractor under the Contractor who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of the Contractor's employees.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- () Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance:

Contractor must maintain limits no less than:

1. General Liability: (Including operations, products and completed	\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the
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Amendment No. 1: Fieldman, Rolapp & Associates
Financial Advisor Services

operations, as applicable.)	general aggregate limit must be twice the required occurrence limit.
2. Automobile Liability:	\$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
4. Professional Liability or Errors & Omissions Liability:	\$1,000,000 each occurrence \$1,000,000 policy aggregate

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Milpitas, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy. General Liability endorsements for "Scheduled Person or Organization" and "Complete Operations" are required
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. The Insurance Company agrees to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) by certified mail, return receipt requested, has been given to the City. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to:

**City of Milpitas
Attention: Purchasing Division
455 E. Calaveras Boulevard
Milpitas, California 95035-5411**

Subcontractors:

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

Absence of Insurance:

Amendment No. 1: Fieldman, Rolapp & Associates
Financial Advisor Services

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement.



September 19, 2017

Mr. Will Fuentes
Director of Financial Services
City of Milpitas
455 E. Calaveras Boulevard
Milpitas CA 95035

Re: Underwriter Engagement Relating to Potential Municipal Securities
Transaction for City of Milpitas – Sewer Financing

Dear Mr. Fuentes:

The City of Milpitas (the “Issuer”) and Stifel, Nicolaus & Company, Incorporated (“Stifel”) are entering into this engagement to confirm that they are engaged in discussions related to a potential issue of (or series of issuances of) municipal securities related to the City’s sewer enterprise (the “Issue”) and to formalize Stifel’s role as underwriter with respect to the Issue.

Engagement as Underwriter

The Issuer is aware of the “Municipal Advisor Rule” of the Securities and Exchange Commission (“SEC”) and the underwriter exclusion from the definition of “municipal advisor” for a firm serving as an underwriter for a particular issuance of municipal securities. The Issuer hereby designates Stifel as an underwriter for the Issue. The Issuer expects that Stifel will provide advice to the Issuer on the structure, timing, terms and other matters concerning the Issue.

Limitation of Engagement

It is the Issuer’s intent that Stifel serve as an underwriter for the Issue, subject to formal approval by the City Council of the Issuer, finalizing the structure of the Issue and executing a bond purchase agreement. While the Issuer presently engages Stifel as the underwriter for the Issue, this engagement letter is preliminary, nonbinding and may be terminated at any time by the Issuer, without penalty or liability for any costs incurred by the underwriter, or Stifel. Furthermore, this engagement letter does not restrict Issuer from entering into the Issue with any other underwriters or selecting an underwriting syndicate that does not include Stifel.

Disclosures Required by MSRB Rule G-17 Concerning the Role of the Underwriter

The Issuer hereby confirms and acknowledges each of the following concerning the role that Stifel would have as an underwriter:

- (1) Municipal Securities Rulemaking Board (“MSRB”) Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors;
- (2) the underwriter’s primary role is to purchase securities with a view to distribution in an arm’s-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer;

- (3) unlike a municipal advisor, the underwriter does not have a fiduciary duty to Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of Issuer without regard to its own financial or other interests;
- (4) the underwriter has a duty to purchase securities from Issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and
- (5) the underwriter will review the official statement for Issuer's securities, in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.

Disclosures Concerning the Underwriter's Compensation

The underwriter will be compensated by a fee and/or an underwriting discount that will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the Issue. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Issue. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

Conflicts of Interest Disclosures

Stifel has not identified any additional potential or actual material conflicts that require disclosure.

Disclosures Relating to Complex Municipal Securities Financing

Since Stifel has not recommended a "complex municipal securities financing" to the Issuer, additional disclosures regarding the financing structure for the Issue are not required under MSRB Rule G-17.

However, if Stifel recommends, or if the Issue is ultimately structured in a manner considered a "complex municipal securities financing" to the Issuer, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and are reasonably foreseeable at that time.

It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

Sincerely,

Stifel, Nicolaus & Company, Incorporated

By: 

Name: Eileen Gallagher
Title: Managing Director

Issuer accepts and acknowledges the foregoing.

Accepted and Executed:

By: _____

Name: _____

Title: _____

Date: _____

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
THE PURCHASE OF FOUR CITY VEHICLES FROM THE NATIONAL AUTO FLEET
GROUP THROUGH A COOPERATIVE PROCUREMENT CONTRACT THROUGH THE
NATIONAL JOINT POWERS ALLIANCE**

WHEREAS, Section I-2-3.08 (“Cooperative Procurement”) of the Milpitas Municipal Code authorizes the City Council to award contracts without competition, when the purchase is pursuant to a cooperative agreement by another public agency in California that used competitive negotiation or bidding procedures at least as restrictive as the City’s; and

WHEREAS, Municipal Code Section I-2-3.08 (“Cooperative Procurement”) specifically authorizes the Purchasing Agent to make such purchases based on an agreement or cooperative purchasing program entered into by any of the following public agencies, regardless of whether the City is a named party to the agreement or an actual participant in such a program: (a) Any public agency situated within the State, if the underlying purchase was made using competitive negotiation, or bidding procedures at least as restrictive as the City’s, including the California Multiple Award Schedules (CMAS), the U.S. Communities Government Purchasing Alliance, the National Joint Powers Alliance (NJPA), the Western States Contracting Alliance (WSCA) or any California County contract; and (b) The Federal GSA Contracts; and

WHEREAS, a contract was awarded to National Auto Fleet Group pursuant to the NJPA Request for Proposal (RFP) No. 120716 entitled “Vehicles, Cars, Vans, SUVs, and Light Trucks with Related Equipment, Accessories, and Services”; and

WHEREAS, to support the Police Department, staff wishes to purchase two Police Interceptor Utility vehicles for \$36,314.47 each, one Chevrolet Tahoe for \$41,186.97, and one Ford F150 SuperCrew Cab truck for \$35,125.63, for a combined total purchase price of \$148,941.54; and

WHEREAS, the Purchasing Agent has reviewed all of the documentation related to the RFP and the original contract awarded to National Auto Fleet Group, and has determined that the underlying purchase was made using competitive bidding procedures at least as restrictive as those of the City of Milpitas and that the price for the vehicles are the same as that offered in the original contract.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Purchasing Agent is authorized to purchase two Police Interceptor Utility vehicles for \$36,314.47 each, one Chevrolet Tahoe for \$41,186.97, and one Ford F150 SuperCrew Cab truck for \$35,125.63, for a combined maximum total purchase price of \$148,941.54. This is a cooperative purchase from National Auto Fleet Group through the NJPA.

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

National Auto Fleet Group *7B

A division of Chevrolet of Watsonville
490 Auto Center Drive, Watsonville, CA 95076
855 BUY-NJPA 626-457-5590
855-289-6572 626-457-5593

August 10, 2017

Sgt. Sean Henegan
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Delivery Via Email

Dear Sgt.Henegan,

In response to your inquiry, we are pleased to submit the following for your consideration:

National Auto Fleet Group will sell, service and deliver at Milpitas, new/unused 2018 Police Patrol Interceptor Utilities responding to your requirement with the attached specifications for:

2018 Ford K8A Utility	33,308.00
Sales Tax	2,997.72
Tire tax	8.75
Total	36,314.47
2 Units	72,628.94

These vehicles are available under the NJPA master vehicle contract# 102811. Pricing reflects Setina front push bumpers installed and delivery. Units are solid black.

Terms are net 30 days.

National Auto Fleet Group welcomes the opportunity to assist you in your vehicle requirements.



John Oviyach
National Account Law Enforcement Manager
National Auto Fleet Group



Prepared By:
Administrator
Your Dealership Name Here

2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED MODEL

Code	Description
K8A	2018 Ford Police Interceptor Utility AWD Base

SELECTED VEHICLE COLORS

Code	Description
-	Interior: CHARCOAL BLACK
-	Exterior 1: SHADOW BLACK
-	Exterior 2: No color has been selected.

SELECTED OPTIONS

Code	Description	Class
PACKAGES		
500A	Order Code 500A (99R) Engine: 3.7L V6 Ti-VCT FFV; (44C) Transmission: 6-Speed Automatic; (STDAX) 3.65 Axle Ratio; (STDGV) GVWR: 6,300 lbs; (STDTR) Tires: P245/55R18 AS BSW; (STDWL) Wheels: 18" x 8" 5-Spoke Painted Black Steel : Includes center caps and full size spare.; (9) Unique HD Cloth Front Bucket Seats w/Vinyl Rear : Includes driver 6-way power track (fore/aft.up/down, tilt with manual recline, 2-way manual lumbar, passenger 2-way manual track (fore/aft. with manual recline) and built-in steel intrusion plates in both front seatbacks.; (STDRD) Radio: MyFord AM/FM/CD/MP3 Capable : Includes clock, 6 speakers and 4.2" color LCD screen center-stack Smart Display.	OPT
EMISSIONS		
422	California Emissions System Required code for California Emissions States - California, Connecticut, Delaware, Massachusetts, Maryland, Maine, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington registration unless codes 936 or 423 are applicable. Optional for Cross Border state dealers - Arizona, District of Columbia, Idaho, New Hampshire, Nevada, Ohio, Virginia and West Virginia.	OPT
POWERTRAIN		
99R	Engine: 3.7L V6 Ti-VCT	OPT
44C	Transmission: 6-Speed Automatic	INC

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED OPTIONS

Code	Description	Class
POWERTRAIN (Continued)		
STDAX	3.65 Axle Ratio	INC
STDGV	GVWR: 6,300 lbs	INC
WHEELS & TIRES		
STDTR	Tires: P245/55R18 AS BSW	INC
STDWL	Wheels: 18" x 8" 5-Spoke Painted Black Steel Includes center caps and full size spare.	INC
SEATS & SEAT TRIM		
9	Unique HD Cloth Front Bucket Seats w/Vinyl Rear Includes driver 6-way power track (fore/aft, up/down, tilt with manual recline, 2-way manual lumbar, passenger 2-way manual track (fore/aft, with manual recline) and built-in steel intrusion plates in both front seatbacks.	INC
OTHER OPTIONS		
113WB	113" Wheelbase	STD
PAINT	Monotone Paint Application	STD
STDRD	Radio: MyFord AM/FM/CD/MP3 Capable Includes clock, 6 speakers and 4.2" color LCD screen center-stack Smart Display.	INC
66A	Front Headlamp Lighting Solution (60A) Grille LED Lights, Siren & Speaker Pre-Wiring. Includes base LED low beam/incandescent (halogen) high beam headlamp with high beam wig-wag function and (2) white rectangular LED side warning lights. Wiring and LED lights included. Controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	INC
66B	Tail Lamp Lighting Solution Includes base LED lights plus (2) rear integrated hemispheric lighthouse white LED side warning lights in taillamps. LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	INC
66C	Rear Lighting Solution Includes (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) mounted to inside liftgate glass and (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) installed on inside lip of liftgate	INC

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED OPTIONS

Code	Description	Class
OTHER OPTIONS (Continued)		
	(lights activate when liftgate is open). LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	
67H	Ready For The Road Package (66A) Front Headlamp Lighting Solution : Includes base LED low beam/incandescent (halogen) high beam headlamp with high beam wig-wag function and (2) white rectangular LED side warning lights. Wiring and LED lights included. Controller not included.; (66B) Tail Lamp Lighting Solution : Includes base LED lights plus (2) rear integrated hemispheric lighthouse white LED side warning lights in taillamps. LED lights only. Wiring and controller not included.; (66C) Rear Lighting Solution : Includes (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) mounted to inside liftgate glass and (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) installed on inside lip of liftgate (lights activate when liftgate is open). LED lights only. Wiring and controller not included.; (85R) Rear Console Plate; (18X) 100 Watt Siren/Speaker w/Bracket & Pigtail; (52P) Hidden Door-Lock Plunger/Rr-Door Handles Inoperable. Includes Whelen Cencom light controller head with dimmable back light, Whelen Cencom relay center/siren/amp with Traffic Advisor (mounted behind 2nd row seat), light controller/relay Cencom wiring (wiring harness) with additional input/output pigtails, high current pigtail, Whelen specific WECAN cable (console to cargo area) connects Cencom to control head and grille linear LED lights (red/blue).	OPT
43D	Dark Car Feature Courtesy lamps disabled when any door is opened.	OPT
17T	Red/White Dome Lamp in Cargo Area	OPT
60A	Grille LED Lights, Siren & Speaker Pre-Wiring	INC
63B	Side Marker LED Sideview Mirrors Includes driver side - red / passenger side - blue. Located on backside of exterior mirror housing. LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G), Ready for the Road Package (67H) or Ultimate Wiring Package (67U).	OPT
51S	Dual (Driver & Passenger) LED Spot Lamps (Unity)	OPT
52P	Hidden Door-Lock Plunger/Rr-Door Handles Inoperable	INC
18W	Windows - Rear-Window Power Delete Operable from front driver side switches.	OPT
85R	Rear Console Plate	INC

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Your Dealership Name Here

2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED OPTIONS

Code	Description	Class
OTHER OPTIONS (Continued)		
	Contours through 2nd row; channel for wiring.	
59F	Keyed Alike - 0576x	OPT
90E	Ballistic Door-Panels (Level III) Driver and passenger front-doors. Tested and meets the requirements of NIJ Standard 0108.01 Level III: 7.62 x 51 mm 9.7g M80 (.308 Winchester 150gr). Per LAPD requirements, they're also designed to withstand special threat rounds: 7.62 x 39 mm MSC 7.9g (Type 56), 5.56 x 45 mm M193 3.36g and 5.56 x 45mm M855 4g.	OPT
76R	Reverse Sensing	OPT
60R	Noise Suppression Bonds (Ground Straps)	OPT
18X	100 Watt Siren/Speaker w/Bracket & Pigtail	INC
FLEET OPTIONS		
	Fleet Advertising Credit	OPT
INTERIOR COLORS FOR : PRIMARY		
9W	Charcoal Black	OPT
EXTERIOR COLORS FOR : PRIMARY		
G1	Shadow Black	OPT

OPTIONS TOTAL

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility KSA AWD Base

STANDARD EQUIPMENT

Powertrain

- 300hp 3.7L DOHC 24 valve V-6 engine with variable valve control, SMPI
- Recommended fuel : regular unleaded
- Emissions Type: ULEV II
- 6 speed automatic transmission with overdrive
- All-wheel drive
- Fuel Economy City: 16mpg
- Fuel Economy Highway: 21mpg
- Fuel Tank Capacity: 18.6gal.

Suspension/Handling

- Front independent strut suspension with anti-roll bar, gas-pressurized shocks
- Rear independent multi-link suspension with anti-roll bar, gas-pressurized shocks
- Electric power-assist rack-pinion steering
- Front and rear 18" x 8" black steel wheels with hub covers
- P245/55WR18.0 BSW AS front and rear tires

Body Exterior

- 4 doors
- Driver and passenger power remote door mirrors
- Black door mirrors
- Rear lip spoiler
- Body-colored bumpers

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K&A AWD Base

STANDARD EQUIPMENT

Body Exterior (Continued)

- *Clearcoat paint*

Convenience

- *Manual air conditioning with air filter*
- *Cruise control with steering wheel controls*
- *Power windows*
- *Driver and passenger 1-touch down*
- *Driver and passenger 1-touch up*
- *Power door locks*
- *Manual tilt steering wheel*
- *Day-night rearview mirror*
- *Power adjustable pedals*
- *1 1st row LCD monitor*
- *Dual visor vanity mirrors*
- *Driver and passenger door bins*

Seats and Trim

- *Seating capacity of 5*
- *Front bucket seats*
- *8-way (6-way power) driver seat adjustment*
- *Manual driver lumbar support*
- *Power height adjustable driver seat*

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K9A AWD Base

STANDARD EQUIPMENT

Seats and Trim (Continued)

- 4-way passenger seat adjustment
- 60-40 folding rear split-bench seat
- Cloth seat upholstery
- Metal-look instrument panel insert

Entertainment Features

- AM/FM stereo radio
- Single CD player
- MP3 decoder
- Steering wheel mounted radio controls
- 6 speakers
- Integrated roof antenna

Lighting, Visibility and Instrumentation

- LED low beam aero-composite headlights
- Variable intermittent front windshield wipers
- Speed sensitive wipers
- Fixed interval rear windshield wiper
- Rear window defroster
- Fixed rearmost windows
- Deep tinted windows
- Front and rear reading lights

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Lighting, Visibility and Instrumentation (Continued)

- *Tachometer*
- *Low tire pressure warning*
- *Trip computer*
- *Parking sensors*
- *Trip odometer*
- *Rear camera*

Safety and Security

- *4-wheel ABS brakes*
- *Brake assist*
- *4-wheel disc brakes*
- *AdvanceTrac w/Roll Stability Control electronic stability*
- *ABS and driveline traction control*
- *Dual front impact airbag supplemental restraint system*
- *Dual seat mounted side impact airbag supplemental restraint system*
- *Safety Canopy System curtain 1st and 2nd row overhead airbag supplemental restraint system*
- *Airbag supplemental restraint system occupancy sensor*
- *Power door locks*
- *Manually adjustable front head restraints*

Specs and Dimensions

- *Engine displacement: 3.7L*

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- *Engine horsepower: 300hp @ 6,250RPM*
- *Engine torque: 280 lb.-ft. @ 4,500RPM*
- *Bore x stroke : 3.76" x 3.41"*
- *Compression ratio: 10.80:1*
- *Gear ratios (1st): 4.48*
- *Gear ratios (2nd): 2.87*
- *Gear ratios (3rd): 1.84*
- *Gear ratios (4th): 1.41*
- *Gear ratios (5th): 1.00*
- *Gear ratios (6th): 0.74*
- *Gear ratios (reverse): 2.88*
- *Curb weight: 4,639lbs.*
- *GVWR: 6,300lbs.*
- *Towing capacity: 2,000lbs.*
- *Exterior length: 197.1"*
- *Exterior body width: 78.9"*
- *Exterior height: 69.2"*
- *Wheelbase: 112.6"*
- *Front track: 67.0"*

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- *Rear track: 67.0"*
- *Turning radius: 19.4'*
- *Min ground clearance: 6.5"*
- *Max ground clearance: 8.5"*
- *Front legroom: 40.6"*
- *Rear legroom: 41.6"*
- *Front headroom: 41.4"*
- *Rear headroom: 40.1"*
- *Front hiproom: 57.3"*
- *Rear hiproom: 56.8"*
- *Front shoulder room: 61.3"*
- *Rear shoulder room: 60.9"*
- *Passenger volume: 118.4cu.ft.*
- *Approach angle: 19.7 deg*
- *Departure angle: 21.7 deg*
- *Interior cargo volume: 48.1cu.ft.*
- *Interior cargo volume seats folded: 85.1cu.ft.*
- *Interior maximum cargo volume: 85.1cu.ft.*

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National Auto Fleet Group

A division of Chevrolet of Watsonville
490 Auto Center Drive, Watsonville, CA 95076
855 BUY-NJPA 626-457-5590
855 289-6572 626-457-5593

August 10, 2017

Sgt. Sean Henegan
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Delivery Via Email

Dear Sgt.Henegan,

In response to your inquiry, we are pleased to submit the following for your consideration:

National Auto Fleet Group will sell, service and deliver at Milpitas, new/unused 2018 Police Patrol Interceptor Utilities responding to your requirement with the attached specifications for:

2018 Ford K8A Utility	33,308.00
Sales Tax	2,997.72
Tire tax	8.75
Total	36,314.47
2 Units	72,628.94

These vehicles are available under the NJPA master vehicle contract# 102811. Pricing reflects Setina front push bumpers installed and delivery. Units are solid black.

Terms are net 30 days.

National Auto Fleet Group welcomes the opportunity to assist you in your vehicle requirements.



John Oviyach
National Account Law Enforcement Manager
National Auto Fleet Group



Prepared By:
Administrator
Your Dealership Name Here

2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED MODEL

Code	Description
K8A	2018 Ford Police Interceptor Utility AWD Base

SELECTED VEHICLE COLORS

Code	Description
-	Interior: CHARCOAL BLACK
-	Exterior 1: SHADOW BLACK
-	Exterior 2: No color has been selected.

SELECTED OPTIONS

Code	Description	Class
PACKAGES		
500A	Order Code 500A (99R) Engine: 3.7L V6 Ti-VCT FFV; (44C) Transmission: 6-Speed Automatic; (STDAX) 3.65 Axle Ratio; (STDGV) GVWR: 6,300 lbs; (STDTR) Tires: P245/55R18 AS BSW; (STDWL) Wheels: 18" x 8" 5-Spoke Painted Black Steel : Includes center caps and full size spare.; (9) Unique HD Cloth Front Bucket Seats w/Vinyl Rear : Includes driver 6-way power track (fore/aft up/down, tilt with manual recline, 2-way manual lumbar, passenger 2-way manual track (fore/aft. with manual recline) and built-in steel intrusion plates in both front seatbacks.; (STD RD) Radio: MyFord AM/FM/CD/MP3 Capable : Includes clock, 6 speakers and 4.2" color LCD screen center-stack Smart Display.	OPT
EMISSIONS		
422	California Emissions System Required code for California Emissions States - California, Connecticut, Delaware, Massachusetts, Maryland, Maine, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington registration unless codes 936 or 423 are applicable. Optional for Cross Border state dealers - Arizona, District of Columbia, Idaho, New Hampshire, Nevada, Ohio, Virginia and West Virginia.	OPT
POWERTRAIN		
99R	Engine: 3.7L V6 Ti-VCT	OPT
44C	Transmission: 6-Speed Automatic	INC

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED OPTIONS

Code	Description	Class
POWERTRAIN (Continued)		
STDAX	3.65 Axle Ratio	INC
STDGV	GVWR: 6,300 lbs	INC
WHEELS & TIRES		
STDTR	Tires: P245/55R18 AS BSW	INC
STDWL	Wheels: 18" x 8" 5-Spoke Painted Black Steel Includes center caps and full size spare.	INC
SEATS & SEAT TRIM		
9	Unique HD Cloth Front Bucket Seats w/Vinyl Rear Includes driver 6-way power track (fore/aft, up/down, tilt with manual recline, 2-way manual lumbar, passenger 2-way manual track (fore/aft, with manual recline) and built-in steel intrusion plates in both front seatbacks.	INC
OTHER OPTIONS		
113WB	113" Wheelbase	STD
PAINT	Monotone Paint Application	STD
STDRD	Radio: MyFord AM/FM/CD/MP3 Capable Includes clock, 6 speakers and 4.2" color LCD screen center-stack Smart Display.	INC
66A	Front Headlamp Lighting Solution (60A) Grille LED Lights, Siren & Speaker Pre-Wiring. Includes base LED low beam/incandescent (halogen) high beam headlamp with high beam wig-wag function and (2) white rectangular LED side warning lights. Wiring and LED lights included. Controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	INC
66B	Tail Lamp Lighting Solution Includes base LED lights plus (2) rear integrated hemispheric lighthouse white LED side warning lights in taillamps. LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	INC
66C	Rear Lighting Solution Includes (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) mounted to inside liftgate glass and (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) installed on inside lip of liftgate	INC

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

SELECTED OPTIONS

Code	Description	Class
OTHER OPTIONS (Continued)		
	(lights activate when liftgate is open). LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G) or Ultimate Wiring Package (67U).	
67H	Ready For The Road Package (66A) Front Headlamp Lighting Solution : Includes base LED low beam/incandescent (halogen) high beam headlamp with high beam wig-wag function and (2) white rectangular LED side warning lights. Wiring and LED lights included. Controller not included.; (66B) Tail Lamp Lighting Solution : Includes base LED lights plus (2) rear integrated hemispheric lighthouse white LED side warning lights in taillamps. LED lights only. Wiring and controller not included.; (66C) Rear Lighting Solution : Includes (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) mounted to inside liftgate glass and (2) backlit flashing linear high-intensity LED lights (driver's side red/passenger side blue) installed on inside lip of liftgate (lights activate when liftgate is open). LED lights only. Wiring and controller not included.; (85R) Rear Console Plate; (18X) 100 Watt Siren/Speaker w/Bracket & Pigtail; (52P) Hidden Door-Lock Plunger/Rr-Door Handles Inoperable. Includes Whelen Cencom light controller head with dimmable back light, Whelen Cencom relay center/siren/amp with Traffic Advisor (mounted behind 2nd row seat), light controller/relay Cencom wiring (wiring harness) with additional input/output pigtails, high current pigtail, Whelen specific WECAN cable (console to cargo area) connects Cencom to control head and grille linear LED lights (red/blue).	OPT
43D	Dark Car Feature Courtesy lamps disabled when any door is opened.	OPT
17T	Red/White Dome Lamp in Cargo Area	OPT
60A	Grille LED Lights, Siren & Speaker Pre-Wiring	INC
63B	Side Marker LED Sideview Mirrors Includes driver side - red / passenger side - blue. Located on backside of exterior mirror housing. LED lights only. Wiring and controller not included. Recommend using Cargo Wiring Uplift Package (67G), Ready for the Road Package (67H) or Ultimate Wiring Package (67U).	OPT
51S	Dual (Driver & Passenger) LED Spot Lamps (Unity)	OPT
52P	Hidden Door-Lock Plunger/Rr-Door Handles Inoperable	INC
18W	Windows - Rear-Window Power Delete Operable from front driver side switches.	OPT
85R	Rear Console Plate	INC

Prepared By:
 Administrator
 Your Dealership Name Here

2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K3A AWD Base

SELECTED OPTIONS

Code	Description	Class
OTHER OPTIONS (Continued)		
	Contours through 2nd row; channel for wiring.	
59F	Keyed Alike - 0576x	OPT
90E	Ballistic Door-Panels (Level III) Driver and passenger front-doors. Tested and meets the requirements of NIJ Standard 0108.01 Level III: 7.62 x 51 mm 9.7g M80 (.308 Winchester 150gr). Per LAPD requirements, they're also designed to withstand special threat rounds: 7.62 x 39 mm MSC 7.9g (Type 56), 5.56 x 45 mm M193 3.36g and 5.56 x 45mm M855 4g.	OPT
76R	Reverse Sensing	OPT
60R	Noise Suppression Bonds (Ground Straps)	OPT
18X	100 Watt Siren/Speaker w/Bracket & Pigtail	INC
FLEET OPTIONS		
	Fleet Advertising Credit	OPT
INTERIOR COLORS FOR : PRIMARY		
9W	Charcoal Black	OPT
EXTERIOR COLORS FOR : PRIMARY		
G1	Shadow Black	OPT

OPTIONS TOTAL

Prepared By:
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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K&A AWD Base

STANDARD EQUIPMENT

Powertrain

- 300hp 3.7L DOHC 24 valve V-6 engine with variable valve control, SMPI
- Recommended fuel : regular unleaded
- Emissions Type: ULEV II
- 6 speed automatic transmission with overdrive
- All-wheel drive
- Fuel Economy City: 16mpg
- Fuel Economy Highway: 21mpg
- Fuel Tank Capacity: 18.6gal.

Suspension/Handling

- Front independent strut suspension with anti-roll bar, gas-pressurized shocks
- Rear independent multi-link suspension with anti-roll bar, gas-pressurized shocks
- Electric power-assist rack-pinion steering
- Front and rear 18" x 8" black steel wheels with hub covers
- P245/55WR18.0 BSW AS front and rear tires

Body Exterior

- 4 doors
- Driver and passenger power remote door mirrors
- Black door mirrors
- Rear lip spoiler
- Body-colored bumpers

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K9A AWD Base

STANDARD EQUIPMENT

Body Exterior (Continued)

- Clearcoat paint

Convenience

- Manual air conditioning with air filter
- Cruise control with steering wheel controls
- Power windows
- Driver and passenger 1-touch down
- Driver and passenger 1-touch up
- Power door locks
- Manual tilt steering wheel
- Day-night rearview mirror
- Power adjustable pedals
- 1 1st row LCD monitor
- Dual visor vanity mirrors
- Driver and passenger door bins

Seats and Trim

- Seating capacity of 5
- Front bucket seats
- 8-way (6-way power) driver seat adjustment
- Manual driver lumbar support
- Power height adjustable driver seat

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Seats and Trim (Continued)

- 4-way passenger seat adjustment
- 60-40 folding rear split-bench seat
- Cloth seat upholstery
- Metal-look instrument panel insert

Entertainment Features

- AM/FM stereo radio
- Single CD player
- MP3 decoder
- Steering wheel mounted radio controls
- 6 speakers
- Integrated roof antenna

Lighting, Visibility and Instrumentation

- LED low beam aero-composite headlights
- Variable intermittent front windshield wipers
- Speed sensitive wipers
- Fixed interval rear windshield wiper
- Rear window defroster
- Fixed rearmost windows
- Deep tinted windows
- Front and rear reading lights

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Lighting, Visibility and Instrumentation (Continued)

- Tachometer
- Low tire pressure warning
- Trip computer
- Parking sensors
- Trip odometer
- Rear camera

Safety and Security

- 4-wheel ABS brakes
- Brake assist
- 4-wheel disc brakes
- AdvanceTrac w/Roll Stability Control electronic stability
- ABS and driveline traction control
- Dual front impact airbag supplemental restraint system
- Dual seat mounted side impact airbag supplemental restraint system
- Safety Canopy System curtain 1st and 2nd row overhead airbag supplemental restraint system
- Airbag supplemental restraint system occupancy sensor
- Power door locks
- Manually adjustable front head restraints

Specs and Dimensions

- Engine displacement: 3.7L

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2018 Ford Police Interceptor Utility

• VEHICLE REPORT

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- Engine horsepower: 300hp @ 6,250RPM
- Engine torque: 280 lb.-ft. @ 4,500RPM
- Bore x stroke : 3.76" x 3.41"
- Compression ratio: 10.80:1
- Gear ratios (1st): 4.48
- Gear ratios (2nd): 2.87
- Gear ratios (3rd): 1.84
- Gear ratios (4th): 1.41
- Gear ratios (5th): 1.00
- Gear ratios (6th): 0.74
- Gear ratios (reverse): 2.88
- Curb weight: 4,639lbs.
- GVWR: 6,300lbs.
- Towing capacity: 2,000lbs.
- Exterior length: 197.1"
- Exterior body width: 78.9"
- Exterior height: 69.2"
- Wheelbase: 112.6"
- Front track: 67.0"

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2018 Ford Police Interceptor Utility

• **VEHICLE REPORT**

2018 Ford Police Interceptor Utility K8A AWD Base

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- *Rear track: 67.0"*
- *Turning radius: 19.4'*
- *Min ground clearance: 6.5"*
- *Max ground clearance: 8.5"*
- *Front legroom: 40.6"*
- *Rear legroom: 41.6"*
- *Front headroom: 41.4"*
- *Rear headroom: 40.1"*
- *Front hiproom: 57.3"*
- *Rear hiproom: 56.8"*
- *Front shoulder room: 61.3"*
- *Rear shoulder room: 60.9"*
- *Passenger volume: 118.4cu.ft.*
- *Approach angle: 19.7 deg*
- *Departure angle: 21.7 deg*
- *Interior cargo volume: 48.1cu.ft.*
- *Interior cargo volume seats folded: 85.1cu.ft.*
- *Interior maximum cargo volume: 85.1cu.ft.*

National Auto Fleet Group

A division of Chevrolet of Watsonville
490 Auto Center Drive, Watsonville, CA 95076
855 BUY-NJPA 626-457-5590
855 289-6572 626-457-5593

August 16, 2017

Sgt. Sean Heneghan
Milpitas Police Department
1275 N. Milpitas Blvd
Milpitas, CA 95035
Delivery Via Email

Dear Sgt. Heneghan,

In response to your inquiry, we are pleased to submit the following for your consideration:

National Auto Fleet Group will sell, service and deliver at Milpitas, new/unused 2018 Chevrolet Tahoe PPV Utilities responding to your requirement with the attached specifications for \$ 37,458.00 plus State Sales Tax, and \$8.75 tire tax (non-taxable). These vehicles are available under the NJPA master vehicle contract# 120716. This unit is sold color. Cost includes PB400 push bumper. Optional Black and white paint is \$1200.00. Transport to Milpitas is \$349.00.

Terms are net 30 days.

National Auto Fleet Group welcomes the opportunity to assist you in your vehicle requirements.



John Oviyach
National Law Enforcement Account Manager
National Auto Fleet Group
Wondries Fleet Group



2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

SELECTED MODEL

Code	Description
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CC15706	2018 Chevrolet Tahoe 4x2 Police Vehicle
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SELECTED VEHICLE COLORS

Code	Description
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-	Interior: JET BLACK, CLOTH SEAT TRIM
-	Exterior 1: BLACK
-	Exterior 2: No color has been selected.

SELECTED OPTIONS

Code	Description	Class
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PACKAGES		
1FL	<p>Preferred Equipment Group 1FL</p> <p>Air Bags : Includes frontal and side-impact for driver and front passenger and head curtain side-impact for all rows in outboard seating positions. NOTE: Head curtain side-impact included for third row seating positions, even though seat has been deleted. Always use safety belts and child restraints. Children are safer when properly secured in a rear seat in the appropriate child restraint. See the Owner's Manual for more information.; (IO5) Radio: Chevrolet MyLink AM/FM Stereo : Includes 8" diagonal color touch-screen, seek-and-scan and digital clock, includes Bluetooth streaming audio for music and select phones; voice-activated technology for radio and phone; and shop with the ability to browse, select and install apps to your vehicle. You can customize your content with audio, weather and more; featuring Apple CarPlay and Android Auto capability for compatible phone; includes 5 USB ports and 1 auxiliary jack.; SiriusXM Satellite Radio Delete; Electronic Cruise Control w/Set & Resume Speed; Black Rubberized Vinyl Floor Covering; OnStar Basic Plan For 5 Years : Includes select vehicle mobile app features, advanced diagnostics and dealer maintenance notification. Does not include emergency, security or navigation services. Visit onstar.com for coverage map, details and system limitations.; Extended-Range Remote Keyless Entry; (AZ3) 3-Passenger Front 40/20/40 Split-Bench Seat : Includes center fold-down armrest with storage (includes auxiliary power outlet, USB port and input jack for audio system), lockable storage compartment in seat cushion, adjustable outboard head restraints and storage pockets.; (STD) Cloth Seat Trim; 2nd Row 60/40 Split-Folding Manual Bench; 3rd Row Passenger Seat Delete; Driver 10-Way Power Seat Adjuster; Front Passenger 6-Way Power Seat Adjuster; Ship-Thru: Kerr Industries; Black Assist Steps; Luggage Rack Delete; Rear Park Assist w/Audible</p>	OPT

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2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

SELECTED OPTIONS

Code	Description	Class
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PACKAGES (Continued)

Warning; 730 Cold-Cranking Amps Auxiliary Battery; SEO: Radio Suppression Package : Includes ground straps.; Skid Plate Package : Frame-mounted shields, includes front underbody shield starting behind front bumper and running to first cross-member, protecting front underbody, oil pan, differential case and transfer case. . REQUIRES a Fleet or Government sales order type. Contains standard equipment specific to Police model.

EMISSIONS

YF5	California State Emissions Requirements	OPT
-----	---	-----

POWERTRAIN

L83	Engine: 5.3L V8 EcoTec3 Flex Fuel Capable Includes active fuel management, direct injection, variable valve timing and aluminum block construction.	STD
MYC	Transmission: Electronic 6-Speed Automatic w/OD Includes tow/haul mode.	STD
GU4	3.08 Rear Axle Ratio	STD
C5U	GVWR: 6,800 lbs (3,084 kgs)	STD

WHEELS & TIRES

QAR	Tires: P265/60R17 AS Police V-Rated	INC
RAP	Wheels: 17" x 8" Black Steel Police (43.2 cm x 20.3 cm). Includes bolt on center caps.	INC

SEATS & SEAT TRIM

AZ3	3-Passenger Front 40/20/40 Split-Bench Seat Includes center fold-down armrest with storage (includes auxiliary power outlet, USB port and input jack for audio system), lockable storage compartment in seat cushion, adjustable outboard head restraints and storage pockets.	INC
STD TM	Cloth Seat Trim	INC
5T5	SEO: 2nd Row Vinyl Seats w/Cloth Front	OPT
9U3	SEO: Front Center Seat (20% Seat) Delete Power driver and passenger bucket seats in base cloth trim. Derived from RPO (AZ3) 40-20-40 split bench seat with the 20% section removed which also removes the	OPT

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2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

SELECTED OPTIONS

Code	Description	Class
SEATS & SEAT TRIM (Continued)		
	auxiliary power outlet, USB port and input jack for audio system. Does not include a floor console. All exposed floor area will remain untrimmed.	
OTHER OPTIONS		
ZY1	Solid Paint	STD
9C1	Identifier for PPV High-Capacity Air Cleaner; 170 Amp High Output Alternator; 730 Cold-Cranking Amps Auxiliary Battery; SEO: Radio Suppression Package : Includes ground straps.; (Z56) Heavy-Duty Police-Rated Suspension Package : Includes front independent torsion bar, stabilizer bar and rear multi-link with coil springs.; (QAR) Tires: P265/60R17 AS Police V-Rated; Spare P265/60R17 AS Police V-Rated; Skid Plate Package : Frame-mounted shields, includes front underbody shield starting behind front bumper and running to first cross-member, protecting front underbody, oil pan, differential case and transfer case.; (RAP) Wheels: 17" x 8" Black Steel Police : (43.2 cm x 20.3 cm). Includes bolt on center caps.; 3rd Row Passenger Seat Delete. Deletes roof rails. Includes electrical power and vehicle signals for customer connection located at the center front floor, auxiliary battery circuit for customer connection located in the rear cargo area, police brakes and certified speedometer. All vehicles include front fascia with recovery hook openings, but does not include hooks.	OPT
IO5	Radio: Chevrolet MyLink AM/FM Stereo 6-Speaker Audio System Feature; Single-Slot CD/MP3 Player; Bluetooth For Phone : Includes personal cell phone connectivity to vehicle audio system. Includes 8" diagonal color touch-screen, seek-and-scan and digital clock, includes Bluetooth streaming audio for music and select phones; voice-activated technology for radio and phone; and shop with the ability to browse, select and install apps to your vehicle. You can customize your content with audio, weather and more; featuring Apple CarPlay and Android Auto capability for compatible phone; includes 5 USB ports and 1 auxiliary jack.	INC
JF4	Power-Adjustable Accelerator & Brake Pedals	OPT
AMF	Remote Keyless Entry Package Includes 6 additional transmitters. NOTE: programming of remotes is at customer's expense. Programming remotes is not a warranty expense.	OPT
VK3	License Plate Front Mounting Package Included on orders with ship-to states that require a front license plate.	OPT
FLEET OPTIONS		
R9Y	Fleet Free Maintenance Credit	OPT

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2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

SELECTED OPTIONS

Code	Description	Class
FLEET OPTIONS (Continued)		
<i>This option code provides a credit in lieu of the free oil changes, tire rotations and inspections (2 maximum), during the first 24 months and 24,000 miles period for this ordered vehicle. The invoice will detail the applicable credit. The customer will be responsible for all oil change, tire rotations and inspections costs for this vehicle. REQUIRES 1 of the following Fleet or Government order types: FBC, FBN, FCA, FCN, FLS, FNR, FRC or FGO. NOT AVAILABLE with FDR order types.</i>		
SEO OPTIONS		
6N6	SEO: Inoperative Inside Rear Door Locks & Handles Doors can only be opened from outside.	OPT
5HP	SEO: 6 Additional Keys NOTE: programming of keys is at customer's expense. Programming keys is not a warranty expense.	OPT
6C7	SEO: Red & White Front Auxiliary Dome Lighting Located on headliner between front row seats (red is LED, white is incandescent). The auxiliary lamp is wired independently from standard dome lamp.	OPT
6N5	SEO: Inoperative Rear Window Switches Rear windows can only operate from driver's position.	OPT
UTQ	SEO: Content Theft Alarm Disable The alarm and horn become non-functional in an attempt of theft of the vehicle.	OPT
WX7	SEO: Auxiliary Speaker Wiring For upfitter connection to front door and windshield pillar speakers.	OPT
6J3	SEO: Grille Lamps & Siren Speakers Wiring	OPT
6J4	SEO: Horn & Siren Circuit Wiring	OPT
6J7	SEO: Headlamp & Taillamp Flasher System DRL compatible with control wire.	OPT
9G8	SEO: Daytime Running Lamps Delete Deletes standard daytime running lamps and automatic headlamp control features.	OPT
7X7	SEO: Left & Right-Hand Spotlamps Deletes 1st row passenger assist handle.	OPT
UT7	SEO: Auxiliary Ground Studs Includes cargo area inside liftgate opening, left and right sides.	OPT

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

SELECTED OPTIONS

Code	Description	Class
SEO OPTIONS (Continued)		
INTERNAL OPTIONS		
Z56	Heavy-Duty Police-Rated Suspension Package Includes front independent torsion bar, stabilizer bar and rear multi-link with coil springs.	INC
PNTTBL	Paint Table : Primary w/PPV/SSV	OPT
INTERIOR COLORS FOR : PRIMARY W/PPV/SSV		
H0U	Jet Black	OPT
EXTERIOR COLORS FOR : PRIMARY W/PPV/SSV		
GBA	Black	OPT

OPTIONS TOTAL

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Powertrain

- *EcoTec3 355hp 5.3L OHV 16 valve V-8 engine with variable valve control, gasoline direct injection, cylinder deactivation*
- *Recommended fuel : regular unleaded*
- *Emissions Type: LEV3-ULEV125*
- *6 speed automatic transmission with overdrive, sequential sport shift, driver mode select*
- *Rear-wheel drive*
- *Limited slip differential*
- *Fuel Economy City: 16mpg*
- *Fuel Economy Highway: 23mpg*
- *Fuel Tank Capacity: 26.0gal.*
- *Automatic rear locking differential*

Suspension/Handling

- *Front independent torsion suspension with anti-roll bar*
- *Rear rigid axle multi-link suspension with anti-roll bar*
- *HD suspension*
- *Speed-sensing electric power-assist rack-pinion steering*
- *Front and rear 17" x 8" black steel wheels with hub covers*
- *P265/60VR17.0 BSW AS front and rear tires*

Body Exterior

- *4 doors*

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Body Exterior (Continued)

- *Driver and passenger power remote heated door mirrors*
- *Body-colored door mirrors*
- *Rear lip spoiler*
- *Body-colored bumpers*
- *Running boards*
- *Trailer hitch*
- *2 skid plates*
- *Trailer harness*
- *Clearcoat paint*
- *Trailer sway control*

Convenience

- *Dual zone front automatic air conditioning*
- *Rear HVAC with separate controls*
- *Auxiliary rear heater*
- *Cruise control with steering wheel controls*
- *Power windows*
- *Driver and passenger 1-touch down*
- *Driver and passenger 1-touch up*
- *Remote power door locks with 2 stage unlock and illuminated entry*
- *Manual tilt steering wheel*

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2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Convenience (Continued)

- *Day-night rearview mirror*
- *Power adjustable pedals*
- *OnStar 4G LTE internet access*
- *OnStar Guidance emergency communication system*
- *Wireless phone connectivity*
- *Turn-by-turn navigation directions*
- *2 1st row LCD monitors*
- *Front and rear cupholders*
- *Dual visor vanity mirrors*
- *Driver and passenger door bins*

Seats and Trim

- *Seating capacity of 5*
- *Front 40-40 bucket seats*
- *8-way (8-way power) driver seat adjustment*
- *Power 2-way driver lumbar support*
- *Power height adjustable driver seat*
- *8-way (8-way power) passenger seat adjustment*
- *Power 2-way passenger lumbar support*
- *60-40 folding rear split-bench seat*
- *Cloth seat upholstery*

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC16706 4x2 Police Vehicle

STANDARD EQUIPMENT

Seats and Trim (Continued)

- *Metal-look instrument panel insert*

Entertainment Features

- *Chevrolet MyLink AM/FM stereo radio*
- *Single CD player*
- *MP3 decoder*
- *Chevrolet MyLink external memory control*
- *Steering wheel mounted radio controls*
- *6 speakers*
- *Window grid antenna*

Lighting, Visibility and Instrumentation

- *Halogen projector beam headlights*
- *Variable intermittent front windshield wipers*
- *Rainsense rain sensing wipers*
- *Fixed interval rear windshield wiper*
- *Rear window defroster*
- *Fixed rearmost windows*
- *Deep tinted windows*
- *Front and rear reading lights*
- *Tachometer*
- *Voltmeter*

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2018 Chevrolet Tahoe

• VEHICLE REPORT

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Lighting, Visibility and Instrumentation (Continued)

- Low tire pressure warning
- Trip computer
- Rear Park Assist parking sensors
- Trip odometer
- Rear camera

Safety and Security

- 4-wheel ABS brakes
- Brake assist
- 4-wheel disc brakes
- Electronic stability
- ABS and driveline traction control
- Dual front impact airbag supplemental restraint system
- Dual seat mounted side impact airbag supplemental restraint system
- Curtain 1st, 2nd and 3rd row overhead airbag supplemental restraint system
- Airbag supplemental restraint system occupancy sensor
- Power remote door locks with 2 stage unlock
- PASS-Key III immobilizer, stolen vehicle tracking system
- Manually adjustable front head restraints
- Manually adjustable rear head restraints

Specs and Dimensions

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- *Engine displacement: 5.3L*
- *Engine horsepower: 355hp @ 5,600RPM*
- *Engine torque: 383 lb.-ft. @ 4,100RPM*
- *Bore x stroke : 3.78" x 3.62"*
- *Compression ratio: 11.00:1*
- *Governed rpm: 5,800RPM*
- *Gear ratios (1st): 4.03*
- *Gear ratios (2nd): 2.36*
- *Gear ratios (3rd): 1.52*
- *Gear ratios (4th): 1.15*
- *Gear ratios (5th): 0.85*
- *Gear ratios (6th): 0.67*
- *Gear ratios (reverse): 3.06*
- *Curb weight: 5,223lbs.*
- *GVWR: 6,800lbs.*
- *Front GAWR: 3,250lbs.*
- *Rear GAWR: 3,700lbs.*
- *Payload: 1,550lbs.*
- *Towing capacity: 4,000lbs.*

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2018 Chevrolet Tahoe

• **VEHICLE REPORT**

2018 Chevrolet Tahoe CC15706 4x2 Police Vehicle

STANDARD EQUIPMENT

Specs and Dimensions (Continued)

- Exterior length: 204.0"
- Exterior body width: 80.5"
- Exterior height: 72.4"
- Wheelbase: 116.0"
- Turning radius: 19.5'
- Min ground clearance: 8.5"
- Front legroom: 45.3"
- Rear legroom: 39.0"
- Front headroom: 42.8"
- Rear headroom: 38.7"
- Front hiproom: 60.8"
- Rear hiproom: 60.2"
- Front shoulder room: 64.8"
- Rear shoulder room: 65.1"
- Interior cargo volume: 51.7cu.ft.
- Interior cargo volume seats folded: 51.7cu.ft.
- Interior maximum cargo volume: 111.8cu.ft.

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National Auto Fleet Group

A Division of Chevrolet of Watsonville

490 Auto Center Drive, Watsonville, CA 95076

(855) BUY-NJPA • (626) 457-5590

(855) 289-6572 • (831) 480-8497 Fax

9/26/2017

QuoteID: 11378

Order Cut Off Date: TBA

Chris Schroeder
City of Milpitas
Purchasing
1275 North Milpitas Blvd
Traffic Unit
Milpitas, California, 95035

Dear Chris Schroeder,

National Auto Fleet Group is pleased to quote the following vehicle(s) for your consideration.

One (1) New/Unused (2018 Ford F-150 (W1C) XLT 2WD SuperCrew 5.5' Box,) and delivered to your specified location, each for

	One Unit	Est. Lease Per Unit To Own	
Contract Price	\$32,217.32	36 Months	\$976.18
Tax (9.0000 %)	\$2,899.56	48 Months	\$744.22
Tire fee	\$8.75	60 Months	\$608.91
Total	\$35,125.63		

- per the attached specifications.

This vehicle(s) is available under the **National Joint Powers Alliance Contract 120716-NAF to purchase or NJPA contract 032615-NCL to lease to own**. Please reference this Bid number on all purchase orders to National Auto Fleet Group. Payment terms are Net 30 days after receipt of vehicle.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to call.

Sincerely,

John Oviyach
Account Manager
Email: john.oviyach@gmail.com
Office: 562-618-0928
Fax: 562-684-4672



GMC

In order to Finalize your Quote, please submit this purchase packet to your governing body for Purchase Order Approval. Once you issue a Purchase Order please send by:

Fax: (831) 480-8497

**Mail: National Auto Fleet Group
490 Auto Center Drive
Watsonville, CA 95076**

Email: Fleet@nationalautofleetgroup.com

We will then send a W-9 if you need one

**Please contact our main office with any questions:
1-855-289-6572**

For information regarding the leasing options, please contact:

**Chris Canavati
National Cooperative Leasing
chris@lscfinancial.com
320-763-7600**

NJPA contract number 032615-NCL



Vehicle Configuration Options

ENGINE

Code	Description
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99B	ENGINE: 3.3L V6 PFDI, -inc: auto start-stop technology and flex-fuel capability (STD)
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TRANSMISSION

Code	Description
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446	TRANSMISSION: ELECTRONIC 6-SPEED AUTOMATIC, -inc: selectable drive modes: normal/tow-haul/sport (STD)
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WHEELS

Code	Description
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64F	WHEELS: 17" SILVER PAINTED ALUMINUM, (STD)
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TIRES

Code	Description
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	TIRES: P245/70R17 BSW A/S, (STD)
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PRIMARY PAINT

Code	Description
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D1	STONE GRAY
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PAINT SCHEME

Code	Description
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	MONOTONE PAINT APPLICATION
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SEAT TYPE

Code	Description
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UG	MEDIUM EARTH GRAY, CLOTH 40/CONSOLE/40 FRONT SEATS, -inc: 4-way adjustable driver/passenger headrests, flow-through console w/column shift and 2nd outlet in console when ordered w/110V/400W outlet (91V)
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AXLE RATIO

Code	Description
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X19	3.55 AXLE RATIO, (STD)
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ADDITIONAL EQUIPMENT

Code	Description
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53B	CLASS IV TRAILER HITCH RECEIVER, -inc: towing capability up to 5,000 lbs, on 3.3L V6 PFDI engine (99B) and 2.7L EcoBoost engine (99P) or up to 7,000 lbs, on 3.5L EcoBoost engine (99G) and 5.0L V8 engine (99S), smart trailer tow connector and 4-pin/7-pin wiring harness
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57Q	REAR WINDOW DEFROSTER
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63T	TAILGATE STEP W/TAILGATE LIFT ASSIST
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153	FRONT LICENSE PLATE BRACKET, -inc: Standard in states requiring 2 license plates, optional to all others
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18B	BLACK PLATFORM RUNNING BOARDS
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96P	DROP-IN BEDLINER (PRE-INSTALLED), -inc: Custom Accessory
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91P	8-WAY POWER DRIVER'S SEAT W/POWER LUMBAR
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47R	ALL-WEATHER RUBBER FLOOR MATS
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76R	REVERSE SENSING SYSTEM
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OPTION PACKAGE

Code	Description
300A	EQUIPMENT GROUP 300A BASE

2018 Fleet/Non-Retail Ford F-150 XLT 2WD SuperCrew 5.5' Box

WINDOW STICKER

2018 Ford F-150 XLT 2WD SuperCrew 5.5' Box

CODE	MODEL	MSRP
W1C	2018 Ford F-150 XLT 2WD SuperCrew 5.5' Box	\$38,230.00
OPTIONS		
99B	ENGINE: 3.3L V6 PFI, -inc: auto start-stop technology and flex-fuel capability (STD)	\$0.00
446	TRANSMISSION: ELECTRONIC 6-SPEED AUTOMATIC, -inc: selectable drive modes: normal/tow-haul/sport (STD)	\$0.00
64F	WHEELS: 17" SILVER PAINTED ALUMINUM, (STD)	\$0.00
—	TIRES: P245/70R17 BSW A/S, (STD)	\$0.00
D1	STONE GRAY	\$0.00
—	MONOTONE PAINT APPLICATION	\$0.00
UG	MEDIUM EARTH GRAY, CLOTH 40/CONSOLE/40 FRONT SEATS, -inc: 4-way adjustable driver/passenger headrests, flow-through console w/column shift and 2nd outlet in console when ordered w/110V/400W outlet (91V)	\$295.00
X19	3.55 AXLE RATIO, (STD)	\$0.00
53B	CLASS IV TRAILER HITCH RECEIVER, -inc: towing capability up to 5,000 lbs, on 3.3L V6 PFI engine (99B) and 2.7L EcoBoost engine (99P) or up to 7,000 lbs, on 3.5L EcoBoost engine (99G) and 5.0L V8 engine (995), smart trailer tow connector and 4-pin/7-pin wiring harness	\$95.00
57Q	REAR WINDOW DEFROSTER	\$220.00
63T	TAILGATE STEP W/TAILGATE LIFT ASSIST	\$375.00
153	FRONT LICENSE PLATE BRACKET, -inc: Standard in states requiring 2 license plates, optional to all others	\$0.00
18B	BLACK PLATFORM RUNNING BOARDS	\$250.00
96P	DROP-IN BEDLINER (PRE-INSTALLED), -inc: Custom Accessory	\$350.00
91P	8-WAY POWER DRIVER'S SEAT W/POWER LUMBAR	\$350.00
47R	ALL-WEATHER RUBBER FLOOR MATS	\$135.00
76R	REVERSE SENSING SYSTEM	\$275.00
300A	EQUIPMENT GROUP 300A BASE	\$0.00

SUBTOTAL	\$40,575.00
Advert/ Adjustments	\$0.00
Manufacturer Destination Charge	\$1,295.00
TOTAL PRICE	\$41,870.00

Est City: 20 MPG
 Est Highway: 25 MPG
 Est Highway Cruising Range: 650.00 mi

Any performance-related calculations are offered solely as guidelines. Actual unit performance will depend on your operating conditions.

Standard Equipment**MECHANICAL**

Engine: 3.3L V6 PDFI -inc: auto start-stop technology and flex-fuel capability LATE AVAILABILITY for flex-fuel capability.
Transmission: Electronic 6-Speed Automatic -inc: selectable drive modes: normal/tow-haul/sport
3.55 Axle Ratio
GVWR: 6,280 lbs Payload Package
Transmission w/SelectShift Sequential Shift Control
Rear-Wheel Drive
70-Amp/Hr 610CCA Maintenance-Free Battery w/Run Down Protection
200 Amp Alternator
Towing w/Harness and Trailer Sway Control
1700# Maximum Payload
Gas-Pressurized Shock Absorbers
Front Anti-Roll Bar
Electric Power-Assist Speed-Sensing Steering
Single Stainless Steel Exhaust
26 Gal. Fuel Tank
Double Wishbone Front Suspension w/Coil Springs
Leaf Rear Suspension w/Leaf Springs
4-Wheel Disc Brakes w/4-Wheel ABS, Front And Rear Vented Discs, Brake Assist, Hill Hold Control and Electric Parking Brake

EXTERIOR

Wheels: 17" Silver Painted Aluminum
Tires: P245/70R17 BSW A/S
Regular Box Style
Steel Spare Wheel
Full-Size Spare Tire Stored Underbody w/Crankdown
Clearcoat Paint
Chrome Front Bumper w/Body-Colored Rub Strip/Fascia Accent
Chrome Rear Step Bumper
Black Side Windows Trim and Black Front Windshield Trim
Black Door Handles
Black Power Side Mirrors w/Convex Spotter and Manual Folding
Fixed Rear Window
Variable Intermittent Wipers
Deep Tinted Glass
Aluminum Panels
Chrome Grille
Tailgate Rear Cargo Access
Tailgate/Rear Door Lock Included w/Power Door Locks
Fully Automatic Aero-Composite Halogen Daytime Running Lights Preference Setting Headlamps w/Delay-Off
Cargo Lamp w/High Mount Stop Light
Front Fog Lamps
Perimeter/Approach Lights

ENTERTAINMENT

Radio: AM/FM Stereo/Single-CD Player -inc: 6 speakers
Radio w/Clock
Fixed Antenna
SYNC -inc: enhanced voice recognition communication and entertainment system, 911 assist, 4.2" LCD display in center stack, Applink and 1 smart charging USB port
2 LCD Monitors In The Front

INTERIOR

Cloth 40/20/40 Front Seat -inc: 4-way adjustable driver/passenger headrests, manual driver/passenger lumbar and armrest w/storage
4-Way Driver Seat -inc: Manual Recline and Fore/Aft Movement
4-Way Passenger Seat -inc: Manual Recline and Fore/Aft Movement
60-40 Folding Split-Bench Front Facing Fold-Up Cushion Rear Seat
Manual Tilt/Telescoping Steering Column
Gauges -inc: Speedometer, Odometer, Voltmeter, Oil Pressure, Engine Coolant Temp, Tachometer, Transmission Fluid Temp and Trip Odometer
Power Rear Windows
Front Cupholder
Rear Cupholder
Keypad
Remote Keyless Entry w/Integrated Key Transmitter, Illuminated Entry and Panic Button
Cruise Control w/Steering Wheel Controls
Manual Air Conditioning
HVAC -inc: Underseat Ducts
Glove Box
Full Cloth Headliner
Urethane Gear Shift Knob
Interior Trim -inc: Metal-Look Instrument Panel Insert, Cabback Insulator and Chrome Interior Accents
Day-Night Rearview Mirror
Driver And Passenger Visor Vanity Mirrors
3 12V DC Power Outlets
Fade-To-Off Interior Lighting
Front And Rear Map Lights
Full Carpet Floor Covering -inc: Carpet Front And Rear Floor Mats
Pickup Cargo Box Lights
Instrument Panel Bin, Dashboard Storage, Driver / Passenger And Rear Door Bins and 1st Row Underseat Storage
Power 1st Row Windows w/Driver And Passenger 1-Touch Up/Down
Delayed Accessory Power
Power Door Locks w/Autolock Feature
Outside Temp Gauge
Analog Display
2 Seatback Storage Pockets
Manual Adjustable Rear Head Restraints
Securilock Anti-Theft Ignition (pats) Engine Immobilizer
Perimeter Alarm

SAFETY

Electronic Stability Control (ESC) And Roll Stability Control (RSC)
ABS And Driveline Traction Control
Side Impact Beams
Dual Stage Driver And Passenger Seat-Mounted Side Airbags
Tire Specific Low Tire Pressure Warning
Dual Stage Driver And Passenger Front Airbags
Airbag Occupancy Sensor
Mykey System -inc: Top Speed Limiter, Audio Volume Limiter, Early Low Fuel Warning, Programmable Sound Chimes and Beltminder w/Audio Mute
Safety Canopy System Curtain 1st And 2nd Row Airbags
Outboard Front Lap And Shoulder Safety Belts -inc: Rear Center 3 Point, Height Adjusters and Pretensioners
Rear Child Safety Locks
Back-Up Camera

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE POLICE CHIEF TO EXECUTE THE AGREEMENT WITH THE CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) FOR THE 2018 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT

WHEREAS, California Office of Traffic Safety (OTS) is administering the 2018 Selective Traffic Enforcement Program (STEP) that offers grant funds from the California Office of Traffic Safety to reimburse law enforcement agencies for overtime expenditures specifically directed towards Traffic Safety Operations; and

WHEREAS, best practice strategies will be conducted to reduce the number of persons killed and injured in traffic collisions involving impairment and other primary collision factors. The funded strategies may include enforcement operations focusing on impaired driving, distracted driving, night-time seat belt use, motorcycle safety, and pedestrian & bicycle safety. Operations are conducted in areas with disproportionate numbers of traffic collisions. Other funded strategies may include public awareness, educational programs, and training for law enforcement; and

WHEREAS, the City of Milpitas has been approved for a grant of \$100,000.00 to conduct Driving Under the Influence (DUI) saturation patrols, DUI checkpoints, traffic enforcement operations, distracted driving enforcement, motorcycle safety programs, pedestrian & bicycle safety programs, public education, equipment purchases, and training on an overtime basis in conjunction with the STEP grant between October 1, 2017 and September 30, 2018; and

WHEREAS, there has been submitted to the City Council of the City of Milpitas a proposed Agreement to be entered into by and between the City of Milpitas and the California Office of Traffic Safety, a copy of which is attached hereto as **Exhibit A** and is made a part hereof.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves the Agreement attached hereto as **Exhibit A** and authorizes the Chief of Police to execute the Agreement for and on behalf of the City of Milpitas.

PASSED AND ADOPTED this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:


Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

1. GRANT TITLE Selective Traffic Enforcement Program (STEP)	
2. NAME OF AGENCY Milpitas	3. Grant Period
4. AGENCY UNIT TO ADMINISTER GRANT Milpitas Police Department	From: 10/01/2017 To: 09/30/2018
5. GRANT DESCRIPTION Best practice strategies will be conducted to reduce the number of persons killed and injured in crashes involving alcohol and other primary collision factors. The funded strategies may include impaired driving enforcement, enforcement operations focusing on primary collision factors, distracted driving, night-time seat belt enforcement, special enforcement operations encouraging motorcycle safety, enforcement and public awareness in areas with a high number of bicycle and pedestrian collisions, and educational programs. These strategies are designed to earn media attention thus enhancing the overall deterrent effect.	
6. Federal Funds Allocated Under This Agreement Shall Not Exceed: \$100,000.00	
7. TERMS AND CONDITIONS: The parties agree to comply with the terms and conditions of the following which are by this reference made a part of the Agreement: <ul style="list-style-type: none"> Schedule A – Problem Statement, Goals and Objectives and Method of Procedure Schedule B – Detailed Budget Estimate and Sub-Budget Estimate (if applicable) Schedule B-1 – Budget Narrative and Sub-Budget Narrative (if applicable) Exhibit A – Certifications and Assurances Exhibit B* – OTS Grant Program Manual <p>*Items shown with an asterisk (*), are hereby incorporated by reference and made a part of this agreement as if attached hereto.</p> <p>These documents can be viewed at the OTS home web page under Grants: www.ots.ca.gov.</p> <p>We, the officials named below, hereby swear under penalty of perjury under the laws of the State of California that we are duly authorized to legally bind the Grant recipient to the above described Grant terms and conditions.</p> <p>IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.</p>	
8. Approval Signatures	
A. AUTHORIZING OFFICIAL OF DEPARTMENT NAME: Steve Pangelinan PHONE: 408-856-2400 TITLE: Chief of Police FAX: 408-586-2488 ADDRESS: 1275 North Milpitas Boulevard Milpitas, CA 95035 EMAIL: spangelinan@ci.milpitas.ca.gov	B. AUTHORIZING OFFICIAL OF OFFICE OF TRAFFIC SAFETY NAME: Rhonda L. Craft PHONE: (916) 509-3030 TITLE: Director FAX: (916) 509-3055 ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758 EMAIL: rhonda.craft@ots.ca.gov
_____ (Signature) _____ (Date)	_____ (Signature) _____ (Date)
C. ACCOUNTING OFFICER OF OFFICE OF TRAFFIC SAFETY NAME: Carolyn Vu ADDRESS: 2208 Kausen Drive, Suite 300 Elk Grove, CA 95758	9. DUNS NUMBER DUNS #: 038142642 REGISTERED ADDRESS: 455 E. Calaveras Blvd CITY: Milpitas ZIP+4: 95035-5411

10. PROJECTED EXPENDITURES						
FUND	CFDA	ITEM/APPROPRIATION	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
402PT-18	20.600	0521-0890-101	2016	2016	23/16	\$8,000.00
164-AL-18	20.608	0521-0890-101	2016	2016	23/16	\$12,000.00
402PT-18	20.600	0521-0890-101	2017	2017	14/17	\$32,000.00
164-AL-18	20.608	0521-0890-101	2017	2017	14/17	\$48,000.00
				AGREEMENT TOTAL		\$100,000.00
				AMOUNT ENCUMBERED BY THIS DOCUMENT \$100,000.00		
<i>I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.</i>				PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$ 0.00		
ACCOUNTING OFFICER'S SIGNATURE 			DATE SIGNED		TOTAL AMOUNT ENCUMBERED TO DATE \$100,000.00	

1. PROBLEM STATEMENT

Milpitas is located on the northern tip of Santa Clara County and is considered the “Crossroads of Silicon Valley.” Since the computer boom of the 1980’s, Milpitas has become a primary commuter connection between Silicon Valley and the bedroom communities in the San Joaquin Valley and beyond.

Two (2) major interstate highways (I-680 and I-880), State Route 237, and Montague Expressway, bring a tremendous amount of vehicular traffic through the city. The Santa Clara Valley Transportation Authority (VTA) and the Bay Area Rapid Transit (BART) system will be operating a new BART station in Milpitas in the fall of 2017, and it will draw people from throughout the bay area. The new BART station will be accompanied by a six-story parking garage and is projected to have 10,000 daily passengers at the onset.

The current residential population of Milpitas has already exceeded 75,000 people. Although the city incorporates only 14.5 square miles and has 137 miles of surface streets, tens of thousands of vehicles travel through the city each day. This enormous amount of vehicular traffic creates congestion and safety challenges for the city.

Besides being the crossroads for many drivers, Milpitas is also a destination for workers and consumers from various communities in the bay area. The corporate headquarters and satellite campuses of international companies are located in Milpitas, and some of the major employers include Cisco Systems, Flextronics International, Kaiser Permanente, LSI Logic Corporation, Maxtor, KLA-Tenor, and SanDisk. The day time population in Milpitas is estimated to be over 100,000 people.

Milpitas is also the home of the Great Mall of the Bay Area, which is Northern California’s largest indoor outlet and shopping destination with more than 1.3 million square feet of retail floor space for more than 200 outlet & value stores and more than 32 dining options. The 11 anchor stores and businesses include H&M, Bed Bath & Beyond, Neiman Marcus Last Call, Saks Fifth Avenue OFF 5th, Century Theaters, and Dave and Buster’s. The Great Mall of the Bay Area attracts residents from the immediate cities of San Jose, Santa Clara, and Fremont.

The Milpitas Police Department has been diligent about addressing traffic safety concerns. The major focus has been attempting to reduce the collision rate on the major arterial roadways. In 2015, there were approximately 1,159 collisions reported and over 249 hit & run collisions reported. The Milpitas Police Department investigated 46 DUI related collisions and 4 fatal traffic collisions during the same time frame. Of the fatal traffic collisions, one was DUI related, another involved a pedestrian, another involved a motorcyclist, and the last involved a speeding vehicle.

Although efforts have been made to vigorously enforce traffic violations by existing personnel, there has not been the significant reduction in the number of injury collisions that we would like to see. Additionally, traffic complaints, including school-related traffic issues, speeding vehicles, and pedestrian violations along our major thoroughfares and in our residential neighborhoods, are significant concerns expressed by members of our community.

The traffic complaints are normally routed to our Traffic Safety Unit (TSU), and the amount of complaints are a challenge to the unit, which at one time was staffed with eight (8) motorcycle officers but is currently staffed with four (4) motorcycle officers. The TSU also previously included a Traffic Lieutenant, a Traffic Sergeant, a Commercial Enforcement Officer, and two (2) DUI Enforcement Officers, but it currently consists of a Traffic Sergeant who oversees the four (4) motorcycle officers. The TSU is responsible for handling all traffic related incidents, with the primary focus of enforcement of traffic laws, and it handles a majority of the vehicle collisions; traffic related calls for service; and issues a majority of the citations.

With best practices and focused enforcement plans designed through the Strategic Traffic Enforcement Program (STEP), the Milpitas Police Department would be more successful in addressing the problems associated with DUI drivers, red light runners, speeding vehicles, aggressive driving, and distracted driving, and it would enable an increased pedestrian & bicyclist safety program.

2. PERFORMANCE MEASURES

A. Goals:

1. Reduce the number of persons killed in traffic collisions.

2. Reduce the number of persons injured in traffic collisions. 3. Reduce the number of pedestrians killed in traffic collisions. 4. Reduce the number of pedestrians injured in traffic collisions. 5. Reduce the number of bicyclists killed in traffic collisions. 6. Reduce the number of bicyclists injured in traffic collisions. 7. Reduce the number of persons killed in alcohol-involved collisions. 8. Reduce the number of persons injured in alcohol-involved collisions. 9. Reduce the number of persons killed in drug-involved collisions. 10. Reduce the number of persons injured in drug-involved collisions. 11. Reduce the number of persons killed in alcohol/drug combo-involved collisions. 12. Reduce the number of persons injured in alcohol/drug combo-involved collisions. 13. Reduce the number of motorcyclists killed in traffic collisions. 14. Reduce the number of motorcyclists injured in traffic collisions. 15. Reduce hit & run fatal collisions. 16. Reduce hit & run injury collisions. 17. Reduce nighttime (2100 - 0259 hours) fatal collisions. 18. Reduce nighttime (2100 - 0259 hours) injury collisions.	
B. Objectives:	Target Number
1. Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov , and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release.	1
2. Participate and report data (as required) in the following campaigns, National Walk to School Day, NHTSA Winter & Summer Mobilization, National Bicycle Safety Month, National Click it or Ticket Mobilization, National Teen Driver Safety Week, National Distracted Driving Awareness Month, National Motorcycle Safety Month, National Child Passenger Safety Week, and California's Pedestrian Safety Month.	1
3. Develop (by December 31) and/or maintain a "HOT Sheet" program to notify patrol and traffic officers to be on the lookout for identified repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. Updated HOT sheets should be distributed to patrol and traffic officers monthly.	1
4. Send law enforcement personnel to the NHTSA Standardized Field Sobriety Testing (SFST) (minimum 16 hours) POST-certified training.	2
5. Send law enforcement personnel to the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) 16 hour POST-certified training.	2
6. Send law enforcement personnel to the Drug Recognition Expert (DRE) training.	1
7. Conduct DUI/DL Checkpoints. A minimum of 1 checkpoint should be conducted during the NHTSA Winter Mobilization and 1 during the Summer Mobilization. To enhance the overall deterrent effect and promote high visibility, it is recommended the grantee issue an advance press release and conduct social media activity for each checkpoint. For combination DUI/DL checkpoints, departments should issue press releases that mention DL's will be checked at the DUI/DL checkpoint. Signs for DUI/DL checkpoints should read "DUI/Driver's License Checkpoint Ahead." OTS does not fund or support independent DL checkpoints. Only on an exception basis and with OTS pre-approval will OTS fund checkpoints that begin prior to 1800 hours. When possible, DUI/DL Checkpoint screeners should be DRE- or ARIDE-trained.	3
8. Conduct DUI Saturation Patrol operation(s).	22
9. Conduct Traffic Enforcement operation(s), including but not limited to, primary collision factor violations.	18
10. Conduct highly publicized Distracted Driving enforcement operation(s) targeting drivers using hand held cell phones and texting.	10
11. Conduct highly publicized Motorcycle Safety enforcement operation(s) in areas or during events with a high number of motorcycle incidents or collisions resulting from unsafe speed, DUI, following too closely, unsafe lane changes, improper turning, and other primary collision factor violations by motorcyclists and other drivers.	2
12. Conduct Nighttime (1800-0559) Click It or Ticket enforcement operations.	4
13. Conduct highly publicized pedestrian and/or bicycle enforcement operation(s) in areas or	6

during events with a high number of pedestrian and/or bicycle collisions resulting from violations made by pedestrians, bicyclists, and drivers.	
14. Conduct Traffic Safety educational presentations with an effort to reach community members. Note: Presentations may include topics such as distracted driving, DUI, speed, bicycle and pedestrian safety, seat belts and child passenger safety.	2
3. METHOD OF PROCEDURE A. Phase 1 – Program Preparation (1st Quarter of Grant Year) <ul style="list-style-type: none"> The police department will develop operational plans to implement the “best practice” strategies outlined in the objectives section. All training needed to implement the program should be conducted this quarter. All grant related purchases needed to implement the program should be made this quarter. In order to develop/maintain the “Hot Sheets,” research will be conducted to identify the “worst of the worst” repeat DUI offenders with a suspended or revoked license as a result of DUI convictions. The Hot Sheets may include the driver’s name, last known address, DOB, description, current license status, and the number of times suspended or revoked for DUI. Hot Sheets should be updated and distributed to traffic and patrol officers at least monthly. Implementation of the STEP grant activities will be accomplished by deploying personnel at high collision locations. <u>Media Requirements</u> <ul style="list-style-type: none"> Issue a press release announcing the kick-off of the grant by November 15. The kick-off press releases and media advisories, alerts, and materials must be emailed to the OTS Public Information Officer at pio@ots.ca.gov, and copied to your OTS Coordinator, for approval 14 days prior to the issuance date of the release. 	
B. Phase 2 – Program Operations (Throughout Grant Year) <ul style="list-style-type: none"> The police department will work to create media opportunities throughout the grant period to call attention to the innovative program strategies and outcomes. <u>Media Requirements</u> <ul style="list-style-type: none"> Send all grant-related activity press releases, media advisories, alerts and general public materials to the OTS Public Information Officer (PIO) at pio@ots.ca.gov, with a copy to your OTS Coordinator. <ul style="list-style-type: none"> If an OTS template-based press release is used, the OTS PIO and Coordinator should be copied when the release is distributed to the press. If an OTS template is not used, or is substantially changed, a draft press release shall be sent to the OTS PIO for approval. Optimum lead time would be 10-20 days prior to the release date to ensure adequate turn-around time. Press releases reporting the results of grant activities such as enforcement operations are exempt from the recommended advance approval process, but still should be copied to the OTS PIO and Coordinator when the release is distributed to the press. Activities such as warrant or probation sweeps and court stings that could be compromised by advanced publicity are exempt from pre-publicity, but are encouraged to offer embargoed media coverage and to report the results. Use the following standard language in all press, media, and printed materials: Funding for this program was provided by a grant from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration. Email the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator at least 30 days in advance, a short description of any significant grant-related traffic safety event or program so OTS has sufficient notice to arrange for attendance and/or participation in the event. Submit a draft or rough-cut of all printed or recorded material (brochures, posters, scripts, artwork, trailer graphics, etc.) to the OTS PIO at pio@ots.ca.gov and copy your OTS Coordinator for approval 14 days prior to the production or duplication. Include the OTS logo, space permitting, on grant-funded print materials; consult your OTS Coordinator for specifics. 	
C. Phase 3 – Data Collection & Reporting (Throughout Grant Year) <ul style="list-style-type: none"> Invoice Claims (due January 30, April 30, July 30, and October 30) Quarterly Performance Reports (due January 30, April 30, July 30, and October 30) <ul style="list-style-type: none"> Collect and report quarterly, appropriate data that supports the progress of goals and objectives. 	

- Provide a brief list of activity conducted, procurement of grant-funded items, and significant media activities. Include status of grant-funded personnel, status of contracts, challenges, or special accomplishments.
- Provide a brief summary of quarterly accomplishments and explanations for objectives not completed or plans for upcoming activities.
- Collect, analyze and report statistical data relating to the grant goals and objectives.

4. METHOD OF EVALUATION

Using the data compiled during the grant, the Grant Director will complete the “Final Evaluation” section in the fourth/final Quarterly Performance Report (QPR). The Final Evaluation should provide a brief summary of the grant’s accomplishments, challenges and significant activities. This narrative should also include whether goals and objectives were met, exceeded, or an explanation of why objectives were not completed.

5. ADMINISTRATIVE SUPPORT

This program has full administrative support, and every effort will be made to continue the grant activities after grant conclusion.

GRANT AGREEMENT

Schedule B

GRANT NUMBER

PT18094

FUND NUMBER	CATALOG NUMBER (CFDA)	FUND DESCRIPTION	TOTAL AMOUNT
402PT	20.600	State and Community Highway Safety	\$40,000.00
164AL	20.608	Minimum Penalties for Repeat Offenders for Driving While Intoxicated	\$60,000.00

COST CATEGORY	CFDA	TOTAL COST TO GRANT
A. PERSONNEL COSTS		
Positions and Salaries		
<u>Full-Time</u>		\$0.00
<u>Overtime</u>		
DUI/DL Checkpoints	20.608	\$37,500.00
DUI Saturation Patrols	20.608	\$21,437.00
Traffic Enforcement	20.600	\$15,057.00
Distracted Driving	20.600	\$9,600.00
Motorcycle Safety	20.600	\$1,920.00
Pedestrian and Bicycle Enforcement	20.600	\$9,600.00
<u>Part-Time</u>		\$0.00
Category Sub-Total		\$95,114.00
B. TRAVEL EXPENSES		
In State Travel	20.600	\$2,823.00
		\$0.00
Category Sub-Total		\$2,823.00
C. CONTRACTUAL SERVICES		
		\$0.00
Category Sub-Total		\$0.00
D. EQUIPMENT		
		\$0.00
Category Sub-Total		\$0.00
E. OTHER DIRECT COSTS		
DUI Checkpoint Supplies	20.608	\$1,063.00
Lidar Batteries	20.600	\$1,000.00
Category Sub-Total		\$2,063.00
F. INDIRECT COSTS		
		\$0.00
Category Sub-Total		\$0.00
GRANT TOTAL		\$100,000.00

BUDGET NARRATIVE	
PERSONNEL COSTS	QUANTITY
DUI/DL Checkpoints - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	3
DUI Saturation Patrols - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	22
Traffic Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	18
Distracted Driving - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	10
Motorcycle Safety - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	2
Pedestrian and Bicycle Enforcement - Overtime for grant funded law enforcement operations conducted by appropriate department personnel.	6
TRAVEL EXPENSES	
In State Travel - Costs are included for appropriate staff to attend conferences and training events supporting the grant goals and objectives and/or traffic safety. Local mileage for grant activities and meetings is included. Anticipated travel may include (enter other known conferences or required events). All conferences, seminars or training not specifically identified in the Schedule B-1 (Budget Narrative) must be approved by OTS. All travel claimed must be at the agency approved rate. Per Diem may not be claimed for meals provided at conferences when registration fees are paid with OTS grant funds.	1
CONTRACTUAL SERVICES	
-	
EQUIPMENT	
-	
OTHER DIRECT COSTS	
DUI Checkpoint Supplies - On-scene supplies needed to conduct sobriety checkpoints. Costs may include 28" traffic cones, MUTCD compliant traffic signs, MUTCD compliant high visibility vests (maximum of 10), traffic counters (maximum of 2), generator, gas for generators, lighting, reflective banners, electronic flares, PAS device supplies, heater, propane for heaters, fan, anti-fatigue mats, and canopies. Additional items may be purchased if approved by OTS. The cost of food and beverages will not be reimbursed.	1
Lidar Batteries - Batteries for light detection and ranging devices used to measure the speed of motor vehicles. The devices will be used for speed enforcement.	1
INDIRECT COSTS	
-	
STATEMENTS/DISCLAIMERS	
There will be no program income generated from this grant.	
Nothing in this 'agreement' shall be interpreted as a requirement, formal or informal, that a particular law enforcement officer issue a specified or predetermined number of citations in pursuance of the goals and objectives.	

CERTIFICATIONS AND ASSURANCES

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place the State in a high risk grantee status in accordance with 49 CFR §18.12.

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1200—Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION

The Grantee Agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88- 352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Civil Rights Restoration Act of 1987 (Pub. L. 100-259), which requires Federal-aid recipients and all sub-recipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities; (f) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd-3 and 290ee-3), relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, et seq.), relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

BUY AMERICA ACT

The Grantee Agency will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

POLITICAL ACTIVITY (HATCHACT)

The Grantee Agency will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Instructions for Primary Certification

1. By signing and submitting this grant agreement, the Grantee Agency Official is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the Grantee Agency Official to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the Grantee Agency Official knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The Grant Agency Official shall provide immediate written notice to the department or agency to which this grant agreement is submitted if at any time the Grantee Agency Official learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *grant agreement*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and coverage sections of 49 CFR Part 29. You may contact the department or agency to which this grant agreement is being submitted for assistance in obtaining a copy of those regulations.
6. The Grantee Agency Official agrees by submitting this grant agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who

is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The Grantee Agency Official further agrees by submitting this grant agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

1. The Grantee Agency Official certifies to the best of its knowledge and belief, that its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this grant agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/grant agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the Grantee Agency Official is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this grant agreement.

Instructions for Lower Tier Certification

1. By signing and submitting this grant agreement, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this grant agreement is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *grant agreement*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this grant agreement is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this grant agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or

voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this grant agreement that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion— Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this grant agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this grant agreement.



City of Milpitas
CONTRACT

Project: **City of Milpitas Parks Maintenance Service**

Bid No: **RFP No. 2210**

Amount of Contract: \$1,241,776.00

THIS CONTRACT, made this 17th day of October, 2017, by and between the City of Milpitas, hereinafter referred to as the "City of Milpitas", a Municipal Corporation, hereinafter referred to as "CITY" and **BrightView Landscape Services, Inc.**, a California corporation hereinafter referred to as "CONTRACTOR",

WITNESSETH:

- A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and
- B. WHEREAS, The term of the contract shall be one (1) year from November 1, 2017 to October 31, 2018 (the "Anniversary Date"). The City reserves the right to review the CONTRACTOR's performance at the end of each year and cancel all or part of the contract. The City of Milpitas reserves the right to extend this contract for four (4) one (1) year options exercisable at the City's sole discretion, not to exceed five (5) years in total. The City may exercise the renewal option years by written notice to the CONTRACTOR by mail, fax or email, including a Purchase Order, sent no later than the last day of the current term. If a renewal option is exercised and/or a price increase is granted will be transmitted to the CONTRACTOR using **Contract Exhibit A – Notice of Exercise of Option to Extend Agreement**, and
- C. WHEREAS, said Specifications include: Proposal No. **2210** for **City of Milpitas Parks Maintenance Service**, in its entirety, all Addenda, and the following documents by this reference are hereby made a part of this contract:
 - 1. Notice of Request For Proposals
 - 2. RFP Schedule
 - 3. Minimum Qualifications
 - 4. Scope of Work
 - 5. Instructions To Proposer
 - 6. Terms and Conditions
 - 7. Special Provisions for Material & Equipment Furnished by Contractor
 - 8. Special Provisions For Services
 - 9. Narrative Proposal – Part 1
 - 10. Proposal Offer Form – Part 2
 - 11. Non-Collusion Affidavit
 - 12. Proposer's Statement Regarding Insurance Coverage

13. Worker's Compensation Insurance Certificate
14. Proposer's Nondiscriminatory Employment Certificate
15. Apprenticeship Standards Certificate *(If Applicable)*
16. Nondiscriminatory Employment Certificate
17. Qualifications and Experience Statement
18. Contractor References
19. Subcontractor References *(If Applicable)*
20. Subcontractor List *(If Applicable)*
21. Subcontractor's Acceptance of Solicitation Requirements *(If Applicable)*
22. Certificate of Compliance – Insurance of Subcontractors *(If Applicable)*
23. Exhibit A – Insurance Requirements – General
24. Attachment A – Integrated Pest Management Summary
25. Attachment B – Individual Park Bid Pages
26. Attachment C – Commercial Lease Agreement – Garbage Truck
27. Attachment D – FieldTurf Maintenance Guidelines
28. Addenda and/or Questions

D. WHEREAS, CONTRACTOR has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the CONTRACTOR's Proposal;

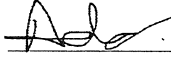
NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and CONTRACTOR's Proposal, which are made a part hereof as though fully set forth, CONTRACTOR hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the CONTRACTOR and agrees to pay the CONTRACTOR the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

Steve Pangelinan, Acting City Manager

BrightView Landscape Service, Inc.
A California Corporation

DocuSigned by:


CONTRACTOR's Authorized Signature

Adnan Mughal
Name of Authorized Representative

VP, Finance
Title of Authorized Representative

City of Milpitas
Business Tax Compliance: Certificate No. 05831

Approved As
To Form:

Christopher J. Diaz, City Attorney

Approved As
To Content:



Will Fuentes, Finance Director

Approved As
To Scope:



Robert Hill, Project Manager

Contract Exhibit A

NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE and DATE:	RFP #2210 City of Milpitas Parks Maintenance Service 11/1/17
CONTRACTOR Name and Address:	BrightView Landscape Services, Inc. 825 Mabury Road San Jose, CA 95133
DATE OF OPTION:	

(Date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to section TERMS AND CONDITIONS, page 32, CONTRACT TERM, of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

Percentage change in CPI Index upon which adjustment is based:	
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Pursuant to Section TERMS AND CONDITIONS, PAGE 33, PRICE ADJUSTMENTS of the Agreement the Rates of Compensation are hereby adjusted as follows: In direct proportion to the change in the Consumer Price Index (CPI) for All Urban Consumers, Series ID: CUURAA422SA0, Not Seasonally Adjusted, All Items, San Francisco-Oakland-San Jose. Base period 1982-84=100 for the month of August as reported by the Bureau of Labor Statistics of the U. S. Department of Labor. The base index shall be the August 2017 bi-monthly index. Subsequent price changes shall be based on the index compared to the August 2018 bi-monthly index. Change in prices shall not exceed the index unless the CONTRACTOR can provide documented justification of increased operational costs such as contract labor rate increases, pass through costs from the manufactures, etc. to a maximum total of five percent (5%).

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay CONTRACTOR an amount not to exceed the amount set forth above for CONTRACTOR's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF MILPITAS
A Municipal Corporation

BRIGHTVIEW LANDSCAPE SERVICES, INC.
A California Corporation

By _____

By _____

Name of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative:

Title of Authorized Representative

SECOND AMENDMENT TO FRANCHISE AGREEMENT

THIS SECOND AMENDMENT TO FRANCHISE AGREEMENT (the “Amendment”), for reference purposes dated _____ day of _____, 2017, is made and entered into by and between the City of Milpitas (“City”), and Milpitas Sanitation, Inc. (“Contractor”).

WHEREAS, City and Contractor entered into that Franchise Agreement between City of Milpitas and Milpitas Sanitation, Inc. for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials dated December 8, 2016, as amended by that First Amendment to Franchise Agreement dated March 21, 2017 (the “Agreement”); and

WHEREAS, Section 13.4 of the Agreement provides that any amendment of the Agreement must be in a writing executed by the parties; and

WHEREAS, City and Contractor desire to amend the Agreement to modify certain services, add certain rates, change certain definitions and make certain other changes.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The definition of “Change in Law” in Exhibit “A” of the Agreement is amended to read as follows:

“Change in Law” means any of the following events or conditions that has a material and adverse effect on the performance by the Parties or any Subcontractor of their respective obligations under this Agreement (except for payment obligations) or on the activities of any Approved Facility in connection with this Agreement:

- a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or
 - b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.”
2. The following new definitions are added to Exhibit “A” of the Agreement:

“Related Party Entity” (whether capitalized or not) means any Affiliate which has financial transactions with Contractor pertaining to this Agreement that have been approved by the City.”

“Related Party Entity Transaction” (whether capitalized or not) means any financial transaction between Contractor and a Related Party Entity pertaining to this Agreement that has been approved by the City.”

3. The definition of “Subcontractor” in Exhibit “A” of the Agreement is amended to read as follows:

“Subcontractor” means a Party, as approved by the City, who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Notwithstanding any other provision in this Agreement, vendors providing materials, supplies or professional services to Contractor, and Approved Facilities, and any respective or collective subcontractors of Approved Facilities, that are not Affiliates of Contractor, shall not be considered Subcontractors for any purpose under this Agreement.”

4. The words “(to be specified by the City)” in Section 2.C.1 of each of Exhibit D-1 and Exhibit D-2 of the Agreement are deleted. The words “Designated” for each of these sections are changed to “Approved” such that Approved Disposal Facility and Approved Transfer Facility refer to the facilities defined in Exhibit A.

5. In order to reflect the service changes set forth below and to establish rates for additional services, Exhibit “L” to the Agreement is amended to read as set forth in the attached Attachment 1.

6. The first paragraph in Section 3.9 of the Agreement is amended to read as follows:

“City and Contractor shall meet and confer to establish the scope of any additional services or modification to existing services (which, subject to any agreement between Contractor and GreenWaste Recovery, Inc. or Zanker Road Resource Management, Ltd., may include use of Approved Facilities) to be provided under this Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City’s request, a written proposal to provide such modified or additional services, including changes in Contractor’s compensation.”

7. Article 4 of the Agreement is amended as follows:

A. Figures 4-2, 4-3 and 4-4, and all references thereto, are deleted.

- B. Item “Additional Service” in Section 4.1.B is amended to read as follows:
“Contractor will provide additional carts as requested by Customer a maximum of three (3) per account.”
- C. Item “Additional Service” in Section 4.1.C.1 is amended to read as follows:
“Contractor will provide additional carts as requested by Customer a maximum of three (3) per account.”
- D. Item “Additional Service” in Section 4.1.C.2. is amended to read as follows:
“Contractor will provide additional carts as requested by Customer a maximum of three (3) per account. Replacement of or additional 2-gallon food scraps kitchen pails will be charged at Contractor’s cost for the food scraps kitchen pails.”
- E. Item “Containers” in Section 4.1.F is amended to read as follows: “Two 1.5yd bulky bags. One thousand (1,000) pound limit per bag.”
- F. Item “Service Frequency” in Section 4.1.F is amended to read as follows:
“Customers may schedule on-call cleanup a total of 4 pickups in a rolling 12 month period. Pickups must be scheduled no less than 8 weeks apart.”
- G. Item “Acceptable Materials” in Section 4.1.F is amended to read as follows:
“Solid Waste, Recyclable Materials, Yard Trimmings (including small tree stumps not to exceed 16 inches in diameter and 1.5 feet in length and branches not to exceed 6 inches in diameter and 3 feet in length), Reusable Materials, Appliances, Bulky Items, E-Waste, C&D (excluding concrete, rock, dirt and brick), and U-Waste.”
- H. The third sentence in Section 4.1.H, currently beginning “Accepted materials are...”, is amended to read as follows: “Accepted materials are the same as provided in Section 4.1.F, excluding E-Waste and U-Waste.”
- I. Item “Container Sizes” in Section 4.2.A. is amended to read as follows: “32-, 64- and 96-gallon Carts (single compartment and split compartment); 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins and 1-, 1.5-, 2-, 3-, and 4-cubic yard Compactors 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors (as requested by Customer)”
- J. Item “Container Sizes” in Section 4.2.B is amended to read as follows: “64- and 96-gallon Carts (split compartment carts) or 32-, 64-, 96-gallon Carts (single compartment carts); 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins and 1-, 1.5-, 2-, 3-, and 4-cubic yard Compactors 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors (as requested by Customer)”
- K. Item “Container Sizes” in Section 4.2.C.1. is amended to add “32-gallon Carts.”

- L. Item “Additional Service” in Section 4.2.C.2. : is amended to read as follows:
“Contractor shall provide one 64-gallon Food Scraps Cart per each enclosure at the Multi-Family complex and additional Food Scraps Carts upon request and charge an “Additional Food Scraps Cart” rate, not to exceed the Maximum Rate approved by the City. Replacement of or additional 2-gallon food scraps kitchen pails will be charged at Contractor’s cost for the food scraps kitchen pails.”
- M. Item “Container” in Section 4.2.D. is amended to read as follows: “Two 1.5yd bulky bags. One thousand (1,000) pound limit per bag.”
- N. Item “Service Frequency” in Section 4.2.D. is amended to read as follows:
“Customers may schedule on-call cleanup a total of 4 pickups in a rolling 12 month period. Pickups must be scheduled no less than 8 weeks apart for Single-Family style properties; on-call bulky item cleanups available for a fee for Multi-Family style properties.”
- O. Item “Acceptable Materials” in Section 4.2.D. is amended to read as follows:
“Solid Waste, Recyclable Materials, Organic Materials, Reusable Materials, C&D (excluding concrete, rock, dirt or brick), Appliances, Bulky Items, E-Waste, and U-Waste.”
- P. Item “ Container Sizes” in Section 4.3.A. is amended to read as follows: “32-, 64- and 96-gallon Carts 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins and 1-, 1.5-, 2-, 2.5-, 3-, and 4-cubic yard Compactors 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors (as requested by Customer).”
- Q. Item “Container Sizes” in Section 4.3.B. is amended to read as follows: “64- and 96-gallon Carts (split compartment) or 32-, 64-, and 96-gallon Carts (single compartments) 1-, 1.5-, 2-, 3-, 4-, 6-, and 8-cubic yard Bins and 1-, 1.5-, 2-, 3-, and 4-cubic yard Compactors 10-, 20-, 30-, and 40-cubic yard Drop Boxes and Compactors (drop boxes and compactors must be serviced at least once every other week or Contractor may apply the City-approved rental fee).”
- R. Item “Container Sizes” in Section 4.3.C. is amended to add “32- and 64-gallon single compartment Carts.”
- S. Section 4.8.D.4.II is amended to read as follows: “Food scraps shall be processed to remove large contaminants (plastic bags, cutlery, bottles, etc.), screened to eliminate smaller contaminants, and either processed into food mash or subjected to anaerobic digestion creating energy and Compost, Mulch or soil amendment.”

- T. Section 4.8.D.4.IV is amended to read as follows: “All Food Scraps shall be Processed and marketed for use as animal feed, Compost, Mulch or soil amendment, and none shall be Disposed, used as Alternative Daily Cover or Alternative Intermediate Cover, or used for Beneficial Reuse purposes.”
- U. Section 4.12.A.1. is amended to change the hours “9 a.m. to 5 p.m.” to “8 a.m. to 6 p.m.”
- V. Section 4.12.A.2. is amended to change the hours “7 a.m. to 6 p.m.” to “8 a.m. to 6 p.m.” and the hours “6 p.m. to 7 a.m.” to “6 p.m. to 8 a.m.”
8. Exhibit B, Section 3.B.12. is amended to read as follows:
- “For the Multi-Family Recycling/Yard Trimmings program implemented as required by AB 341 and/or AB 1826, conduct the following activities, at a minimum:
- Provide a starter kit to inform Multi-Family property owners and managers of the Multi-Family Recycling/Yard Trimmings Collection program;
 - Place Recycling/Yard Trimmings presentation posters in highly trafficked areas of Multi-Family complexes; and
 - Produce and distribute periodically, but at Contractor’s discretion not more than quarterly, newsletters informing Multi-Family property owners and managers about the Multi-Family Recycling/Yard Trimmings Collection program.”
9. City and Contractor agree and acknowledge that, except as explicitly modified by this Amendment, the Agreement remains in full force and effect.

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IN WITNESS WHEREOF, we, the authorized agents of the contracting parties, by our
duly authorized agents, do hereby affix our signatures and seals this ____day of
_____, 2017.

CITY OF MILPITAS

MILPITAS SANITATION, INC.

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Its: _____

Its: _____

By: _____

Printed
Name: _____

Its: _____

ATTACHMENT 1

EXHIBIT L
AMENDMENT NO. 2

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR SINGLE FAMILY CART SERVICE CUSTOMERS

Basic Weekly Service* (rates include Food Scraps, Recyclables, & Yard Trimmings) Billed Quarterly

Single Family - Premises with individual units that are billed directly for service. Single-Family includes 1-4 residential units that are provided carts (single-family, mobile homes, duplex through four-plex developments, and townhomes and row houses with accessible individual street frontage).

Container Size	Curbside Quarterly Rate	Backyard or Sideyard Quarterly Rate
19-gal Solid Waste /19-gal Food Scraps Split Cart	\$96.66	
19-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc		\$124.53
26-gal Solid Waste /19-gal Food Scraps Split Cart	\$105.06	
26-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc		\$132.93
45-gal Solid Waste /19-gal Food Scraps Split Cart	\$123.57	
45-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc		\$151.44
67-gal Solid Waste /29-gal Food Scraps Split Cart	\$141.96	
67-gal Solid Waste /29-gal Food Scraps Split Cart Backyard Svc		\$169.83

* Quarterly rate also includes 96 gallon split cart for recyclables and a 96 gallon yard trimmings cart. 64 gallon split cart for recyclables is available upon request. Recyclable Materials program includes collection of batteries placed in a zipper-style bag on top of the recycling cart.

Basic Weekly Service* Senior Rates (including Food Scraps, Recyclables, & Yard Trimmings) Billed Quarterly

Single Family - Premises with individual units that are billed directly for service. Single-Family includes 1-4 residential units that are provided carts (single-family, mobile homes, duplex through four-plex developments, and townhomes and row houses with accessible individual street frontage).

Container Size	Curbside Quarterly Rate	Backyard or Sideyard Quarterly Rate
19-gal Solid Waste /19-gal Food Scraps Split Cart - Senior	\$48.33	
19-gal Solid Waste /19-gal Food Scraps Split Cart - Senior Disabled Backyard Svc		\$48.33
26-gal Solid Waste /19-gal Food Scraps Split Cart - Senior	\$52.53	
26-gal Solid Waste /19-gal Food Scraps Split Cart - Senior Disabled Backyard Svc		\$52.53

* Quarterly rate also includes 96 gallon split cart for recyclables and a 96 gallon yard trimmings cart. 64 gallon split cart for recyclables is available upon request. Senior citizen billing status and free backyard service are subject to periodic evaluation and are not a permanent, binding status agreement between Milpitas Sanitation and the subscriber. Milpitas Sanitation reserves the right to require subscribers to provide verification of eligibility upon request.

Basic Weekly Service* Backyard Disabled Svc (including Food Scraps, Recyclables, & Yard Trimmings) Billed Quarterly

Single Family - Premises with individual units that are billed directly for service. Single-Family includes 1-4 residential units that are provided carts (single-family, mobile homes, duplex through four-plex developments, and townhomes and row houses with accessible individual street frontage).

Container Size	Backyard or Sideyard Quarterly Rate
19-gal Solid Waste /19-gal Food Scraps Split Cart Disabled Backyard Svc	\$96.66
26-gal Solid Waste /19-gal Food Scraps Split Cart Disabled Backyard Svc	\$105.06
45-gal Solid Waste /19-gal Food Scraps Split Cart Disabled Backyard Svc	\$123.57
67-gal Solid Waste /29-gal Food Scraps Split Cart Disabled Backyard Svc	\$141.96

* Quarterly rate also includes 96 gallon split cart for recyclables and a 96 gallon yard trimmings cart. 64 gallon split cart for recyclables is available upon request. Free backyard service is subject to periodic evaluation and is not a permanent, binding status agreement between Milpitas Sanitation and the subscriber. Milpitas Sanitation reserves the right to require those subscribers receiving free backyard service to provide verification of eligibility upon request.

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR SINGLE FAMILY CART SERVICE CUSTOMERS

Mobile Home Park Basic Weekly Service* (rates include Food Scraps & Recyclables) Billed Quarterly

Container Size	Curbside Quarterly Rate	Backyard or Sideyard Quarterly Rate
19-gal Solid Waste /19-gal Food Scraps Split Cart - Mobile Home Park	\$29.49	
19-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc - Mobile Home Park		\$57.36
19-gal Solid Waste /19-gal Food Scraps Split Cart - Disabled Backyard Svc Mobile Home Park		\$29.49
26-gal Solid Waste /19-gal Food Scraps Split Cart - Mobile Home Park	\$32.07	
26-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc - Mobile Home Park		\$59.94
26-gal Solid Waste /19-gal Food Scraps Split Cart - Disabled Backyard Svc Mobile Home Park		\$32.07
45-gal Solid Waste /19-gal Food Scraps Split Cart - Mobile Home Park	\$47.55	
45-gal Solid Waste /19-gal Food Scraps Split Cart Backyard Svc - Mobile Home Park		\$75.42
45-gal Solid Waste /19-gal Food Scraps Split Cart Disabled Backyard Svc - Mobile Home Park		\$47.55

** Quarterly rate also includes 96 gallon split cart for recyclables - 64 gallon split cart for recyclables is available upon request.*

Recyclable Materials program includes collection of batteries placed in a bag on top of the recycling cart.

Mobile Home Park residents do not have the option of Yard Trimmings service. Park Management will arrange for centralized service.

Single Family - Additional Containers/ Scheduled Services

There will be a limit of 3 Recyclable Materials and 3 Yard Trimmings carts per customer account.

Container Size	Curbside Quarterly Rate	Backyard or Sideyard Quarterly Rate
Recyclable Materials Cart - No Charge 64 gal Split Cart (Fibers/Containers)	\$0.00	
Recyclable Materials Cart - No Charge 96 gal Split Cart (Fibers/Containers)	\$0.00	
Recyclable Materials Cart - No Charge 64 gal Split Cart - Additional (Fibers/Containers)	\$0.00	
Recyclable Materials Cart - No Charge 96 gal Split Cart - Additional (Fibers/Containers)	\$0.00	
Yard Trimmings Cart - No Charge 96 gal Cart	\$0.00	
Yard Trimmings Cart - No Charge 96 gal Cart - Additional	\$0.00	
Food Scraps Kitchen Pail - 2 Gallon	\$0.00	
Backyard Service - Recycling (for routing only)		\$0.00
Backyard Service - Organics (for routing only)		\$0.00

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR SINGLE FAMILY CART SERVICE CUSTOMERS

Used Motor Oil & Cooking Oil On-Call Service

Material Type	Examples	Rate Per Pickup
Used Motor Oil	Used Motor Oil Recovery Kit - Delivery/Removal. During removal driver will leave a new Used Motor Oil Recover Kit for future use.	\$0.00
Used Cooking Oil	Used Cooking Oil Recovery Kit - Delivery/Removal. During removal driver will leave a new Used Cooking Oil Recover Kit for future use.	\$0.00

On-Call Curbside Bulky Bag/Bulky Item Collection - Up to 4 Times Per Year*

Customers are eligible to dispose of up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organics Materials, Reusable Materials, C&D, U-Waste and E-Waste OR up to one (1) Appliance or Bulky Item:

Material Type	Examples	Rate Per Pickup
On Call Clean Up	MSI will deliver two 1.5yd bulky bags and pickup 7 days later. Customer can dispose up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organics Materials, Reusable Materials, C&D and E-Waste.	\$0.00
On Call Bulky Item Only	Either one (1) Appliance or one (1) Bulky Item.	\$0.00

MSI will deliver two 1.5 yard bulky bags on customers service day. Both bulky bags will be removed on the next service day. There is no discount for not filling both bags. If customer reschedules one bag for a future date they will be charged the additional on call curbside clean up charge.

Customers may schedule on-call cleanup a total of 4 pickups in a rolling 12 month period. Pickups must be scheduled no less than 8 weeks apart.

Organic material includes small tree stumps not to exceed 16 in diameter & length. C&D excludes concrete, rock, dirt and brick. Any single items exceeding seventy-five (75) pounds will not be accepted.

On-Call Curbside Bulky Bag/Bulky Item Collection - Additional Charges/Services

Customers requiring additional annual collection events may pay a fee to schedule additional on-call collections. Customers may also pay a fee for those additional items that exceed the on-call collection event guidelines.

Material Type	Examples	Rate Per Pickup
Additional On-Call Curbside Clean Up	Customers requesting annual collection beyond four (4) per year. Program guidelines will apply.	\$144.49
Major Appliances	Air Conditioners, Refrigerators, Freezers or any items containing oil, fuel or Freon (White Goods). One free per clean up - additional charged per item.	\$41.82
Bulky Items / E-Waste	Bulky Item Examples - Gas & electric powered push style lawn mowers. And all other large items; Bathtubs, mattresses, furniture, bicycles, used exercise equipment, beds, box springs, tires, e-Waste etc. (contact MSI for acceptable items). One free per clean up - additional charged per item.	\$56.23

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR SINGLE FAMILY CART SERVICE CUSTOMERS

Rates for Miscellaneous Service for Single Family Cart Customers

Service	Description of Service	Rate per Occurrence
Bag Tags	Overages will be collected from customers who purchase additional bag tags. Customer purchased tags will be affixed to extra garbage (placed at the curb in a bag).	\$3.75
1 yd, 2yd or 3yd Temporary Bin Service	Placement and removal of 1 cubic yard bin provided for occasional use. Customer may dispose of Solid Waste, Recyclable Materials, Organics Material (including small tree stumps not to exceed 16 inches in diameter or length), Reusable Materials, C&D (excluding concrete). U-Waste and E-Waste will not be accepted.	\$118.62
Cart Replacement/ Service Level Changes	Charge if customer requires service level change for cart service in excess of more than once per 12 month period.	\$59.31
Christmas Tree Removal	Collection of holiday trees for the two weeks beginning on the Monday following Christmas and continue for ten (10) Business days. Holiday trees are collected on Customer's regular collection day during the designated weeks.	\$0.00
Damaged Cart Repair	Charge if customer requires cart replacement in excess of one replacement per year.	\$89.74
2-gallon Food Scraps Pail - Additional/ Replacement	Charge if customer requires delivery of additional pails or replacement pails.	Contractor Cost Adjusted Annually During Rate Increase
Late Fee	Charged per quarter to delinquent accounts.	\$20.00
Restart Fee	Charge if customer requires cart replacement of recycling or yard trimmings cart as a result of delinquent account service reduction. Fee will be waived for those customers opting into the MSI autopay program.	\$59.31
Returned ACH Fee	Charge for autopay by bank payments rejected by customer's bank.	\$5.35
Returned Check Fee	Charge for checks returned unpaid by customers' bank.	\$25.80

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR SINGLE FAMILY CART SERVICE CUSTOMERS

Additional On-Call Pick-Up Service for Single Family Solid Waste/Food Scraps Cart (Cost per Pick-Up)

	<u>Container Size</u>			
	38-gal	45-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$10.85	\$12.85	\$18.28	\$27.42
Pick-Up Saturday	\$16.27	\$19.27	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Single Family Recyclables Cart (Cost per Pick-Up)

	<u>Container Size</u>	
	64-gal	96-gal
Pick-Up Monday thru Friday	\$18.28	\$27.42
Pick-Up Saturday	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Single Family Yard Trimmings Cart (Cost per Pick-Up)

	<u>Container Size</u>
	96-gal
Pick-Up Monday thru Friday	\$27.42
Pick-Up Saturday	\$41.10

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY CART SERVICE CUSTOMERS

Basic Weekly Service (including Food Scraps, Recyclables, & Yard Trimmings) Billed Monthly

Multi-Family sites are Residential Premises, other than a Single-Family Premises, with five (5) or more dwelling units used for Residential purposes that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address.

Medium Multi-Family - Premises may include single-family attached and semi-attached houses and duplexes and shall be provided with carts or bins, as determined by the Contractor and approved by the City. *Below are services offered for those customers requesting cart services only.*

Solid Waste Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density Solid Waste collection is provided in two options (1) in a split cart for solid waste/food scraps or (2) in a dedicated single compartment cart for solid waste.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
26-gal Solid Waste/19-gal Food Scraps Cart	\$20.70	\$36.23	\$51.76	\$67.29	\$82.82	\$98.35
45-gal Solid Waste/19-gal Food Scraps Cart	\$25.14	\$44.00	\$62.85	\$81.71	\$100.56	\$119.42
67-gal Solid Waste/29-gal Food Scraps Cart	\$29.58	\$51.76	\$73.94	\$96.13	\$118.31	\$140.49
32-gallon Solid Waste Cart	\$20.70	\$36.23	\$51.76	\$67.29	\$82.82	\$98.35
64-gallon Solid Waste Cart	\$25.14	\$44.00	\$62.85	\$81.71	\$100.56	\$119.42
96-gallon Solid Waste Cart	\$29.58	\$51.76	\$73.94	\$96.13	\$118.31	\$140.49

Recyclables - Split Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density Recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gal Fiber/32-gal Containers	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
48-gal Fiber/48-gal Containers	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12

Recyclables - Dedicated Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density Recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Paper/Fibers Cart	\$5.18	\$9.06	\$12.94	\$16.82	\$20.70	\$24.59
64-gallon Paper/Fibers Cart	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
96-gallon Paper/Fibers Cart	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12
32-gallon Recyclable Containers Cart	\$5.18	\$9.06	\$12.94	\$16.82	\$20.70	\$24.59
64-gallon Recyclable Containers Cart	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
96-gallon Recyclable Containers Cart	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12

Food Scraps Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density customers also have option of a split cart collection for Food Scraps Collection with Solid Waste Collection (as shown in table above).

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
64-gallon Cart	\$20.11	\$35.20	\$50.28	\$65.37	\$80.45	\$95.54

Yard Trimmings Cart Rates (Cost per Month per Cart)*

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Cart	\$16.56	\$28.99	\$41.41	\$53.83	\$66.25	\$78.68
64-gallon Cart	\$20.11	\$35.20	\$50.28	\$65.37	\$80.45	\$95.54
96-gallon Cart	\$23.66	\$41.41	\$59.16	\$76.90	\$94.65	\$112.40

**Yard Trimmings material must fit inside cart with lid closed. Clean yard trimmings and clean wood (no paint, varnish, hardware etc.) only.*

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY CART SERVICE CUSTOMERS

Multi-Family On-Call Curbside Bulky Bag/Bulky Item Collection

MultiFamily style properties may schedule on-call bulky item cleanups for a fee. Items must be available at a location which is immediately accessible by service vehicle. Customers are eligible to dispose of up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organics Materials, Reusable Materials, U-Waste and E-Waste OR up to one (1) Appliance or Bulky Item. Rates for additional items or additional services per year are as

Material Type	Examples	Rate Per Pickup
Additional On-Call Curbside Clean Up	Customers requesting annual collection beyond four (4) per year. Program guidelines will apply.	\$144.49
Major Appliances	Air Conditioners, Refrigerators, Freezers or any items containing oil, fuel or Freon (White Goods). One free per clean up - additional charged per item.	\$41.82
Bulky Items	Bulky Item Examples - Gas & electric powered push style lawn mowers. And all other large items; Bathtubs, mattresses, furniture, bicycles, used exercise equipment, beds, box springs, tires etc. (contact MSI for acceptable items). One free per clean up - additional charged per item.	\$56.23

MSI will deliver two 1.5 yard bulky bags on customers service day. Both bulky bags will be removed on the next service day. There is no discount for not filling both bags. If customer reschedules one bag for a future date they will be charged the additional on call curbside clean up charge.

Organic material includes small tree stumps not to exceed 16 in diameter & length. C&D excludes concrete, rock, dirt and brick. Any single items exceeding seventy-five (75) pounds will not be accepted.

Rates for Miscellaneous Service for Multi-Family Cart Customers

Service	Description of Service	Rate per Occurrence
Bag Tags	Overages will be collected from customers who purchase additional bag tags. Customer purchased tags will be affixed to extra garbage (placed at the curb in a bag).	\$3.75
Cart Replacement/ Service Level Changes	Charge if customer requires service level change for cart service in excess of more than once per 12 month period.	\$59.31
Christmas Tree Removal	Collection of holiday trees for the two weeks beginning on the Monday following Christmas and continue for ten (10) Business days. Holiday trees are collected on Customer's regular collection day during the designated weeks.	\$0.00
Damaged Cart Repair	Charge if customer requires cart replacement in excess of one replacement per year.	\$89.74
2-gallon Food Scraps Pail - Additional/ Replacement	Charge if customer requires delivery of additional pails or replacement pails.	Contractor Cost Adjusted Annually During Rate Increase
Late Fee	Charged per quarter to delinquent accounts.	\$15.00
Restart Fee	Charge if customer requires cart replacement of recycling or yard trimmings cart as a result of delinquent account service reduction. Fee will be waived for those customers opting into the MSI autopay program.	\$59.31
Returned ACH Fee	Charge for autopay by bank payments rejected by customer's bank.	\$5.35
Returned Check Fee	Charge for checks returned unpaid by customers' bank.	\$25.80

EXHIBIT L

MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE

RATES FOR MULTI-FAMILY CART SERVICE CUSTOMERS

Additional On-Call Pick-Up Service for Multi-Family Solid Waste / Food Scraps Cart (Cost per Pick-Up)

	<u>Container Size</u>		
	45-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$12.85	\$18.28	\$27.42
Pick-Up Saturday	\$19.27	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Solid Waste (Cost per Pick-Up)

	<u>Container Size</u>		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Split Recyclables Cart (Cost per Pick-Up)

	<u>Container Size</u>	
	64-gal	96-gal
Pick-Up Monday thru Friday	\$18.28	\$27.42
Pick-Up Saturday	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Paper/Fibers Cart (Cost per Pick-Up)

	<u>Container Size</u>		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Recyclable Containers Cart (Cost per Pick-Up)

	<u>Container Size</u>		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY CART SERVICE CUSTOMERS

Additional On-Call Pick-Up Service for Multi-Family Food Scraps Cart (Cost per Pick-Up)

	<u>Container Size</u>
	64-gal
Pick-Up Monday thru Friday	\$18.28
Pick-Up Saturday	\$27.40

Additional On-Call Pick-Up Service for Multi-Family Yard Trimmings Cart (Cost per Pick-Up)

	<u>Container Size</u>		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Basic Weekly Service Options (including Food Scraps, Recyclables, & Yard Trimmings) Billed Monthly

Medium Multi-Family - Premises may include single-family attached and semi-attached houses and duplexes and shall be provided with carts or bins, as determined by the Contractor and approved by the City.

High Density Multi-Family - Attached row houses to triplexes and four-plexes, stacked townhomes, and walkup garden apartments and shall be provided with carts, bins or compactors, as determined by the Contractor and approved by the City.

Very High Density Multi-Family - Row houses to townhouses to lofts and stacked flats with structured parking and shall be provided with carts, bins or compactors, as determined by the Contractor and approved by the City.

Solid Waste Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$84.31	\$140.54	\$193.05	\$238.57	\$289.71	\$340.83
1.5 cubic yard	\$108.21	\$193.01	\$256.41	\$330.56	\$404.63	\$478.74
2 cubic yard	\$132.09	\$238.57	\$340.83	\$443.07	\$545.28	\$647.60
3 cubic yard	\$189.74	\$348.78	\$502.09	\$655.47	\$808.88	\$962.21
4 cubic yard	\$220.45	\$404.39	\$572.78	\$741.26	\$909.68	\$1,078.14
6 cubic yard	\$303.51	\$563.90	\$825.97	\$1,066.64	\$1,328.72	\$1,590.79
8 cubic yard	\$395.07	\$732.00	\$1,057.67	\$1,383.46	\$1,709.17	\$2,034.95

Bin Size	Compacted Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$252.93	\$421.62	\$579.16	\$715.70	\$869.14	\$1,022.48
1.5 cubic yard	\$324.64	\$579.03	\$769.24	\$991.67	\$1,213.90	\$1,436.23
2 cubic yard	\$396.26	\$715.70	\$1,022.48	\$1,329.21	\$1,635.84	\$1,942.81
3 cubic yard	\$569.23	\$1,046.33	\$1,506.27	\$1,966.40	\$2,426.63	\$2,886.63
4 cubic yard	\$661.35	\$1,213.16	\$1,718.34	\$2,223.77	\$2,729.04	\$3,234.41

Recyclables - Paper/Fiber Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$21.08	\$35.14	\$48.26	\$59.64	\$72.43	\$85.21
1.5 cubic yard	\$27.05	\$48.25	\$64.10	\$82.64	\$101.16	\$119.69
2 cubic yard	\$33.02	\$59.64	\$85.21	\$110.77	\$136.32	\$161.90
3 cubic yard	\$47.44	\$87.19	\$125.52	\$163.87	\$202.22	\$240.55
4 cubic yard	\$55.11	\$101.10	\$143.19	\$185.31	\$227.42	\$269.53
6 cubic yard	\$75.88	\$140.98	\$206.49	\$266.66	\$332.18	\$397.70
8 cubic yard	\$98.77	\$183.00	\$264.42	\$345.87	\$427.29	\$508.74

Bin Size	Compacted Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$63.23	\$105.41	\$144.79	\$178.92	\$217.28	\$255.62
1.5 cubic yard	\$81.16	\$144.76	\$192.31	\$247.92	\$303.48	\$359.06
2 cubic yard	\$99.07	\$178.92	\$255.62	\$332.30	\$408.96	\$485.70
3 cubic yard	\$142.31	\$261.58	\$376.57	\$491.60	\$606.66	\$721.66
4 cubic yard	\$165.34	\$303.29	\$429.58	\$555.94	\$682.26	\$808.60

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Food Scrap Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$67.45	\$112.43	\$154.44	\$190.85	\$231.77	\$272.66
2 cubic yard	\$105.67	\$190.85	\$272.66	\$354.46	\$436.22	\$518.08
3 cubic yard	\$151.80	\$279.02	\$401.67	\$524.37	\$647.10	\$769.77

Yard Trimmings Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$67.45	\$112.43	\$154.44	\$190.85	\$231.77	\$272.66
1.5 cubic yard	\$86.57	\$154.41	\$205.13	\$264.44	\$323.71	\$383.00
2 cubic yard	\$105.67	\$190.85	\$272.66	\$354.46	\$436.22	\$518.08
3 cubic yard	\$151.80	\$279.02	\$401.67	\$524.37	\$647.10	\$769.77
4 cubic yard	\$176.36	\$323.51	\$458.22	\$593.00	\$727.74	\$862.51
6 cubic yard	\$242.81	\$451.12	\$660.78	\$853.31	\$1,062.98	\$1,272.63
8 cubic yard	\$316.06	\$585.60	\$846.14	\$1,106.77	\$1,367.34	\$1,627.96

Push Pull and Lock/Unlock Rates (Cost per Month per Bin)

Distance	Pick-Ups per Week					
	Pick-Ups per Week					
	1	2	3	4	5	6
Bin Lock/Unlock	\$16.74	\$16.74	\$16.74	\$16.74	\$16.74	\$16.74
1 - 25 Ft	\$9.29	\$18.57	\$27.79	\$37.07	\$46.34	\$55.58
26-50 Ft	\$18.57	\$37.07	\$55.58	\$74.11	\$92.66	\$111.19
51-75 Ft	\$27.79	\$55.58	\$83.37	\$111.19	\$138.97	\$166.75
76-100 Ft	\$37.07	\$74.11	\$111.19	\$148.22	\$185.32	\$222.36
101-125 Ft	\$46.34	\$92.66	\$138.97	\$185.32	\$231.60	\$277.92
126-150 Ft	\$55.58	\$111.19	\$148.22	\$231.60	\$277.92	\$333.50
151-175 Ft	\$64.88	\$129.71	\$194.56	\$259.41	\$324.23	\$389.12
176-200 Ft	\$74.11	\$148.22	\$222.36	\$296.46	\$370.59	\$444.69

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Recyclables - Dedicated Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density Recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Paper/Fibers Cart	\$5.18	\$9.06	\$12.94	\$16.82	\$20.70	\$24.59
64-gallon Paper/Fibers Cart	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
96-gallon Paper/Fibers Cart	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12
32-gallon Recyclable Containers Cart	\$5.18	\$9.06	\$12.94	\$16.82	\$20.70	\$24.59
64-gallon Recyclable Containers Cart	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
96-gallon Recyclable Containers Cart	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12

Recyclables - Split Cart Rates (Cost per Month per Cart)

Multi-Family Medium Density Recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gal Fiber/32-gal Containers	\$6.29	\$11.00	\$15.71	\$20.43	\$25.14	\$29.86
48-gal Fiber/48-gal Containers	\$7.39	\$12.94	\$18.49	\$24.03	\$29.58	\$35.12

Food Scraps Cart Rates (Cost per Month per Cart)

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
64-gallon Cart	\$20.11	\$35.20	\$50.28	\$65.37	\$80.45	\$95.54

Yard Trimmings Cart Rates (Cost per Month per Cart)*

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Cart	\$16.56	\$28.99	\$41.41	\$53.83	\$66.25	\$78.68
64-gallon Cart	\$20.11	\$35.20	\$50.28	\$65.37	\$80.45	\$95.54
96-gallon Cart	\$23.66	\$41.41	\$59.16	\$76.90	\$94.65	\$112.40

**Yard Trimmings material must fit inside cart with lid closed. Clean yard trimmings and clean wood (no paint, varnish, hardware etc.) only.*

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Multi-Family On-Call Curbside Bulky Bag/Bulky Item Collection

MultiFamily style properties may schedule on-call bulky item cleanups for a fee. Items must be available at a location which is immediately accessible by service vehicle. Customers are eligible to dispose of up to three (3) cubic yards of Solid Waste, Recyclable Materials, Organics Materials, Reusable Materials, C&D, U-Waste and E-Waste OR up to one (1) Appliance or Bulky Item.

Material Type	Examples	Rate Per Pickup
Additional On-Call Curbside Clean Up	Customers requesting annual collection beyond four (4) per year. Program guidelines will apply.	\$144.49
Major Appliances	Air Conditioners, Refrigerators, Freezers or any items containing oil, fuel or Freon (White Goods). One free per clean up - additional charged per item.	\$41.82
Bulky Items	Bulky Item Examples - Gas & electric powered push style lawn mowers. And all other large items; Bathtubs, mattresses, furniture, bicycles, used exercise equipment, beds, box springs, tires etc. (contact MSI for acceptable items). One free per clean up - additional charged per item.	\$56.23

MSI will deliver two 1.5 yard bulky bags on customers service day. Both bulky bags will be removed on the next service day. There is no discount for not filling both bags. If customer reschedules one bag for a future date they will be charged the additional on call curbside clean up charge.

Organic material includes small tree stumps not to exceed 16 in diameter & length. C&D excludes concrete, rock, dirt and brick. Any single items exceeding seventy-five (75) pounds will not be accepted.

Rates for Miscellaneous Service for Multi-Family Cart Customers

Service	Description of Service	Rate per Occurrence
Bag Tags	Overages will be collected from customers who purchase additional bag tags. Customer purchased tags will be affixed to extra garbage (placed at the curb in a bag).	\$3.75
Cart Replacement/ Service Level Changes	Charge if customer requires service level change for cart service in excess of more than once per 12 month period.	\$59.31
Christmas Tree Removal	Collection of holiday trees for the two weeks beginning on the Monday following Christmas and continue for ten (10) Business days. Holiday trees are collected on Customer's regular collection day during the designated weeks.	\$0.00
Damaged Bin/Cart Repair	Charge if customer requires cart replacement in excess of one replacement per year.	\$89.74
2-gallon Food Scraps Pail - Additional/ Replacement	Charge if customer requires delivery of additional pails or replacement pails.	Contractor Cost Adjusted Annually During Rate Increase
Late Fee	Charged per quarter to delinquent accounts.	\$15.00
Lock Installation	Delivery and installation of Milpitas Sanitation lock.	\$111.03
Restart Fee	Charge if customer requires cart replacement of recycling or yard trimmings cart as a result of delinquent account service reduction. Fee will be waived for those customers opting into the MSI autopay program.	\$59.31
Returned ACH Fee	Charge for autopay by bank payments rejected by customer's bank.	\$5.35
Returned Check Fee	Charge for checks returned unpaid by customers' bank.	\$25.80
Steam Clean	Steam Cleaning - Per Bin	\$111.03

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Additional On-Call Pick-Up Service for Multi-Family Split Recyclables Cart (Cost per Pick-Up)

	Container Size	
	64-gal	96-gal
Pick-Up Monday thru Friday	\$18.28	\$27.42
Pick-Up Saturday	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Paper/Fibers Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Recyclable Containers Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Multi-Family Food Scraps Cart (Cost per Pick-Up)

	Container Size
	64-gal
Pick-Up Monday thru Friday	\$18.28
Pick-Up Saturday	\$27.40

Additional On-Call Pick-Up Service for Multi-Family Yard Trimmings Cart (Cost per Pick-Up)

	Container Size	
	64-gal	96-gal
Pick-Up Monday thru Friday	\$18.28	\$27.42
Pick-Up Saturday	\$27.40	\$41.10

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Additional On-Call Pick-Up for Solid Waste Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

	Compacted Materials				
	Container Size				
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$132.33	\$198.50	\$264.66	\$396.99	\$529.32
Pick-Up Other than Regularly Scheduled Day (S)	\$155.19	\$232.79	\$310.38	\$465.57	\$620.76

Additional On-Call Pick-Up for Recyclables Paper/Fibers Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

	Compacted Materials				
	Container Size				
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$132.33	\$198.50	\$264.66	\$396.99	\$529.32
Pick-Up Other than Regularly Scheduled Day (S)	\$155.19	\$232.79	\$310.38	\$465.57	\$620.76

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR MULTI-FAMILY BIN SERVICE CUSTOMERS

Additional On-Call Pick-Up for Food Scraps Bin (Cost per Pick-Up)

	Loose Materials		
	Container Size		
	1 cu yd	2 cu yd	3 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$73.00	\$85.18
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$103.43	\$112.57

Additional On-Call Pick-Up for Yard Trimmings Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL CART SERVICE CUSTOMERS

Basic Weekly Service (including Food Scraps, Recyclables, & Yard Trimmings) Billed Monthly

Commercial Customers with Cart service for Solid Waste receive Split Cart Recycling; Customers with Bin or Compactor service for Solid Waste receive dedicated Paper/Fibers and Recyclable Containers carts.

Solid Waste Cart Rates (Cost per Month per Cart)*

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Cart	\$30.48	\$53.34	\$76.20	\$99.06	\$121.92	\$144.78
64-gallon Cart	\$35.85	\$62.73	\$89.61	\$116.50	\$143.38	\$170.27
96-gallon Cart	\$41.18	\$72.06	\$102.95	\$133.83	\$164.72	\$195.60

**Service is offered up to six (6) times per week but not less than one (1) time per week, as requested by Customer (Saturday service is available only to customers receiving service Monday through Friday). Dedicated Solid Waste carts only - Split carts for solid waste/food scraps is not offered to Commercial customers.*

Recyclables - Dedicated Cart Rates (Cost per Month per Cart)

Commercial recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Paper/Fibers Cart	\$7.62	\$13.34	\$19.05	\$24.77	\$30.48	\$36.20
64-gallon Paper/Fibers Cart	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
96-gallon Paper/Fibers Cart	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90
32-gallon Recyclable Containers Cart	\$7.62	\$13.34	\$19.05	\$24.77	\$30.48	\$36.20
64-gallon Recyclable Containers Cart	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
96-gallon Recyclable Containers Cart	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90

Recyclables - Split Cart Rates (Cost per Month per Cart)

Commercial recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gal Fiber/32-gal Containers	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
48-gal Fiber/48-gal Containers	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90

Food Scraps Cart Rates (Cost per Month per Cart)

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
64-gallon Cart	\$28.68	\$50.18	\$71.69	\$93.20	\$114.71	\$136.21

Yard Trimmings Cart Rates (Cost per Month per Cart)*

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Cart	\$24.38	\$42.67	\$60.96	\$79.25	\$97.54	\$115.83
64-gallon Cart	\$28.68	\$50.18	\$71.69	\$93.20	\$114.71	\$136.21
96-gallon Cart	\$32.94	\$57.65	\$82.36	\$107.07	\$131.77	\$156.48

**Yard Trimmings material must fit inside cart with lid closed. Clean yard trimmings and clean wood (no paint, varnish, hardware etc.) only.*

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL BIN SERVICE CUSTOMERS

Basic Weekly Service (including Food Scraps, Recyclables, & Yard Trimmings) Billed Monthly

Commercial Customers with Cart service for Solid Waste receive Split Cart Recycling; Customers with Bin or Compactor service for Solid Waste receive dedicated Paper/Fibers and Recyclable Containers carts.

Solid Waste Bin Rates (Cost per Month per Bin)

Container Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$116.21	\$208.08	\$286.19	\$354.51	\$430.67	\$506.87
1.5 cubic yard	\$149.80	\$286.00	\$381.91	\$492.60	\$603.24	\$713.87
2 cubic yard	\$183.37	\$354.51	\$506.87	\$659.08	\$811.37	\$963.73
3 cubic yard	\$263.93	\$518.70	\$747.15	\$975.61	\$1,204.05	\$1,432.48
4 cubic yard	\$309.74	\$606.84	\$861.47	\$1,116.15	\$1,370.75	\$1,625.40
6 cubic yard	\$428.55	\$849.54	\$1,244.58	\$1,609.96	\$2,004.97	\$2,399.97
8 cubic yard	\$558.20	\$1,104.21	\$1,597.95	\$2,091.87	\$2,585.67	\$3,079.53

Container Size	Compacted Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$348.64	\$624.24	\$858.56	\$1,063.53	\$1,292.01	\$1,520.61
1.5 cubic yard	\$449.40	\$858.01	\$1,145.73	\$1,477.80	\$1,809.72	\$2,141.61
2 cubic yard	\$550.12	\$1,063.53	\$1,520.61	\$1,977.25	\$2,434.11	\$2,891.19
2.5 cubic yard	\$670.96	\$1,309.82	\$1,881.03	\$2,452.04	\$3,023.12	\$3,594.31
3 cubic yard	\$791.80	\$1,556.11	\$2,241.45	\$2,926.83	\$3,612.14	\$4,297.44
4 cubic yard	\$929.22	\$1,820.53	\$2,584.40	\$3,348.45	\$4,112.24	\$4,876.19

* Commercial customers that receive Solid Waste bin service receive dedicated Paper/Fiber and Recycling Container carts. Split cart not offered.

Recyclables - Paper/Fiber Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$29.05	\$52.02	\$71.55	\$88.63	\$107.67	\$126.72
1.5 cubic yard	\$37.45	\$71.50	\$95.48	\$123.15	\$150.81	\$178.47
2 cubic yard	\$45.84	\$88.63	\$126.72	\$164.77	\$202.84	\$240.93
3 cubic yard	\$65.98	\$129.68	\$186.79	\$243.90	\$301.01	\$358.12
4 cubic yard	\$77.44	\$151.71	\$215.37	\$279.04	\$342.69	\$406.35
6 cubic yard	\$107.14	\$212.38	\$311.14	\$402.49	\$501.24	\$599.99
8 cubic yard	\$139.55	\$276.05	\$399.49	\$522.97	\$646.42	\$769.88

Bin Size	Compacted Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$87.16	\$156.06	\$214.64	\$265.88	\$323.00	\$380.15
1.5 cubic yard	\$112.35	\$214.50	\$286.43	\$369.45	\$452.43	\$535.40
2 cubic yard	\$137.53	\$265.88	\$380.15	\$494.31	\$608.53	\$722.80
3 cubic yard	\$197.95	\$389.03	\$560.36	\$731.71	\$903.03	\$1,074.36
4 cubic yard	\$232.31	\$455.13	\$646.10	\$837.11	\$1,028.06	\$1,219.05

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL BIN SERVICE CUSTOMERS

Food Scrap Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$92.97	\$166.46	\$228.95	\$283.61	\$344.54	\$405.50
2 cubic yard	\$146.70	\$283.61	\$405.50	\$527.27	\$649.09	\$770.98
3 cubic yard	\$211.15	\$414.96	\$597.72	\$780.49	\$963.24	\$1,145.98

Yard Trimmings Bin Rates (Cost per Month per Bin)

Bin Size	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
1 cubic yard	\$92.97	\$166.46	\$228.95	\$283.61	\$344.54	\$405.50
1.5 cubic yard	\$119.84	\$228.80	\$305.53	\$394.08	\$482.59	\$571.10
2 cubic yard	\$146.70	\$283.61	\$405.50	\$527.27	\$649.09	\$770.98
3 cubic yard	\$211.15	\$414.96	\$597.72	\$780.49	\$963.24	\$1,145.98
4 cubic yard	\$247.79	\$485.47	\$689.17	\$892.92	\$1,096.60	\$1,300.32
6 cubic yard	\$342.84	\$679.63	\$995.66	\$1,287.97	\$1,603.97	\$1,919.98
8 cubic yard	\$446.56	\$883.37	\$1,278.36	\$1,673.50	\$2,068.54	\$2,463.63

Push Pull and Lock/Unlock Rates (Cost per Month per Bin)

Distance	Loose Materials					
	Pick-Ups per Week					
	1	2	3	4	5	6
Bin Lock/Unlock	\$16.74	\$16.74	\$16.74	\$16.74	\$16.74	\$16.74
1 - 25 Ft	\$9.29	\$18.57	\$27.79	\$37.07	\$46.34	\$55.58
26-50 Ft	\$18.57	\$37.07	\$55.58	\$74.11	\$92.66	\$111.19
51-75 Ft	\$27.79	\$55.58	\$83.37	\$111.19	\$138.97	\$166.75
76-100 Ft	\$37.07	\$74.11	\$111.19	\$148.22	\$185.32	\$222.36
101-125 Ft	\$46.34	\$92.66	\$138.97	\$185.32	\$231.60	\$277.92
126-150 Ft	\$55.58	\$111.19	\$148.22	\$231.60	\$277.92	\$333.50
151-175 Ft	\$64.88	\$129.71	\$194.56	\$259.41	\$324.23	\$389.12
176-200 Ft	\$74.11	\$148.22	\$222.36	\$296.46	\$370.59	\$444.69

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL BIN SERVICE CUSTOMERS

Recyclables Collection Rates (Cost per Month)

Commercial recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Paper/Fibers Cart	\$7.62	\$13.34	\$19.05	\$24.77	\$30.48	\$36.20
64-gallon Paper/Fibers Cart	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
96-gallon Paper/Fibers Cart	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90
32-gallon Recyclable Containers Cart	\$7.62	\$13.34	\$19.05	\$24.77	\$30.48	\$36.20
64-gallon Recyclable Containers Cart	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
96-gallon Recyclable Containers Cart	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90

Recyclables - Split Cart Rates (Cost per Month per Cart)

Commercial recyclables collection is provided in two options (1) in a split cart for paper/fibers and recyclable containers or (2) in dedicated single compartment carts for paper/fibers and recyclable containers. Customers must have either split cart or dedicated carts.

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gal Fiber/32-gal Containers	\$8.96	\$15.68	\$22.40	\$29.12	\$35.85	\$42.57
48-gal Fiber/48-gal Containers	\$10.29	\$18.02	\$25.74	\$33.46	\$41.18	\$48.90

Food Scraps Cart Rates (Cost per Month per Cart)

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
64-gallon Cart	\$28.68	\$50.18	\$71.69	\$93.20	\$114.71	\$136.21

Yard Trimmings Cart Rates (Cost per Month per Cart)*

Container Size	Pick-Ups per Week					
	1	2	3	4	5	6
32-gallon Cart	\$24.38	\$42.67	\$60.96	\$79.25	\$97.54	\$115.83
64-gallon Cart	\$28.68	\$50.18	\$71.69	\$93.20	\$114.71	\$136.21
96-gallon Cart	\$32.94	\$57.65	\$82.36	\$107.07	\$131.77	\$156.48

**Yard Trimmings material must fit inside cart with lid closed. Clean yard trimmings and clean wood (no paint, varnish, hardware etc.) only.*

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL SERVICE CUSTOMERS

Rates for Miscellaneous Service for Commercial Customers

Service	Description of Service	Rate per Occurrence
Bag Tags	Overages will be collected from customers who purchase additional bag tags. Customer purchased tags will be affixed to extra garbage (placed at the curb in a bag).	\$3.75
Cart Replacement/ Service Level Changes	Charge if customer requires service level change for cart service in excess of more than once per 12 month period.	\$59.31
Christmas Tree Removal	Collection of holiday trees for the two weeks beginning on the Monday following Christmas and continue for ten (10) Business days. Holiday trees are collected on Customer's regular collection day during the designated weeks.	\$0.00
Damaged Bin/Cart Repair	Charge if customer requires cart replacement in excess of one replacement per year.	\$89.74
Late Fee	Charged per quarter to delinquent accounts.	\$15.00
Lock Installation	Delivery and installation of Milpitas Sanitation lock.	\$111.03
Restart Fee	Charge if customer requires cart replacement of recycling or yard trimmings cart as a result of delinquent account service reduction. Fee will be waived for those customers opting into the MSI autopay program.	\$59.31
Returned ACH Fee	Charge for autopay by bank payments rejected by customer's bank.	\$5.35
Returned Check Fee	Charge for checks returned unpaid by customers' bank.	\$25.80
Steam Clean	Steam Cleaning - Per Bin	\$111.03

EXHIBIT L

MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE

RATES FOR COMMERCIAL SERVICE CUSTOMERS

Additional On-Call Pick-Up Service for Commercial Solid Waste Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Commercial Split Recyclables Cart (Cost per Pick-Up)

	Container Size	
	64-gal	96-gal
Pick-Up Monday thru Friday	\$18.28	\$27.42
Pick-Up Saturday	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Commercial Paper/Fibers Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Commercial Recyclable Containers Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

Additional On-Call Pick-Up Service for Commercial Food Scraps Cart (Cost per Pick-Up)

	Container Size
	64-gal
Pick-Up Monday thru Friday	\$18.28
Pick-Up Saturday	\$27.40

Additional On-Call Pick-Up Service for Commercial Yard Trimmings Cart (Cost per Pick-Up)

	Container Size		
	32-gal	64-gal	96-gal
Pick-Up Monday thru Friday	\$9.14	\$18.28	\$27.42
Pick-Up Saturday	\$13.70	\$27.40	\$41.10

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL SERVICE CUSTOMERS

Additional On-Call Pick-Up for Solid Waste Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

	Compacted Materials				
	Container Size				
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$132.33	\$198.50	\$264.66	\$396.99	\$529.32
Pick-Up Other than Regularly Scheduled Day (S)	\$155.19	\$232.79	\$310.38	\$465.57	\$620.76

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL SERVICE CUSTOMERS

Additional On-Call Pick-Up for Recyclables Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

	Compacted Materials				
	Container Size				
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$132.33	\$198.50	\$264.66	\$396.99	\$529.32
Pick-Up Other than Regularly Scheduled Day (S)	\$155.19	\$232.79	\$310.38	\$465.57	\$620.76

EXHIBIT L
MAXIMUM RATES APPROVED BY THE CITY FOR RATE PERIOD ONE
RATES FOR COMMERCIAL SERVICE CUSTOMERS

Additional On-Call Pick-Up for Food Scraps Bin (Cost per Pick-Up)

	Loose Materials		
	Container Size		
	1 cu yd	2 cu yd	3 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$73.00	\$85.18
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$103.43	\$112.57

Additional On-Call Pick-Up for Yard Trimmings Bin (Cost per Pick-Up)

	Loose Materials						
	Container Size						
	1 cu yd	1.5 cu yd	2 cu yd	3 cu yd	4 cu yd	6 cu yd	8 cu yd
Pick-Up On Regularly Scheduled Day (M-F)	\$60.83	\$65.39	\$73.00	\$85.18	\$100.39	\$136.88	\$147.52
Pick-Up Other than Regularly Scheduled Day (S)	\$86.69	\$95.83	\$103.43	\$112.57	\$121.69	\$147.52	\$165.77

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR DEBRIS BOX AND COMPACTOR CUSTOMERS

Per-Pull Rates

Customer shall be charged a per-pull rate each time its debris box or compactor box is serviced. In addition, customer will be charged for each ton of material collected at rates listed below.

Disposal and Processing Rates

In addition to the per-pull rate (listed above) charged each time the debris box or compactor box is serviced, the customer will be charged for each ton of material in the debris box or compactor box based on actual weight of materials. Per-ton rates are listed below.

Per-ton charges will be made after materials are collected.

Additional material rates are available upon request.

Material Type	Drop Box Size	Per Pull Charge	Svc Code	Disposal & Processing Rates
Solid Waste	6	\$525.83	6SW	\$87.93
	15	\$525.83	15SW	\$87.93
	20	\$736.51	20SW	\$87.93
	30	\$927.35	30SW	\$87.93
	40	\$1,132.57	40SW	\$87.93
Compacted Solid Waste	12	\$604.71	12COM	\$87.93
	15	\$604.71	15COM	\$87.93
	16	\$846.99	16COM	\$87.93
	20	\$846.99	20COM	\$87.93
	24	\$846.99	24COM	\$87.93
	25	\$846.99	25COM	\$87.93
	30	\$1,066.46	30COM	\$87.93
	34	\$1,066.46	34COM	\$87.93
	40	\$1,302.46	40COM	\$87.93
Dirt	6	\$473.25	6DIR	\$70.00
Concrete	6	\$473.25	6CON	\$70.00
	15	\$473.25	15CON	\$70.00
Brick	6	\$473.25	6BRICK	\$70.00
Construction & Demolition Materials Debris Box Rates	15	\$473.25	15CAD	\$70.00
	20	\$662.86	20CAD	\$70.00
	30	\$834.62	30CAD	\$70.00
	40	\$1,019.31	40CAD	\$70.00
Metal	15	\$262.92	15MET	\$0.00
	20	\$368.26	20MET	\$0.00
	30	\$463.68	30MET	\$0.00
	40	\$566.29	40MET	\$0.00
Wood	15	\$473.25	15WD	\$70.00
	20	\$662.86	20WD	\$70.00
	30	\$834.62	30WD	\$70.00
	40	\$1,019.31	40WD	\$70.00
Organics	15	\$420.67	15ORG	\$92.00
	20	\$589.21	20ORG	\$92.00
	30	\$741.88	30ORG	\$92.00
	40	\$906.06	40ORG	\$92.00

EXHIBIT L
MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE
RATES FOR DEBRIS BOX AND COMPACTOR CUSTOMERS

Material Type	Drop Box Size	Per Pull Charge	Svc Code	Disposal & Processing Rates
Compacted Organics	12	\$483.76	12COMORG	\$92.00
	15	\$483.76	15COMORG	\$92.00
	16	\$677.59	16COMORG	\$92.00
	20	\$677.59	20COMORG	\$92.00
	24	\$677.59	24COMORG	\$92.00
	25	\$853.16	25COMORG	\$92.00
	30	\$853.16	30COMORG	\$92.00
	40	\$1,041.97	40COMORG	\$92.00
Commingled Recyclables	15	\$262.92	15CMR	\$0.00
	20	\$368.26	20CMR	\$0.00
	30	\$463.68	30CMR	\$0.00
	40	\$566.29	40CMR	\$0.00
Compacted Commingled Recyclables	12	\$302.35	12COMR	\$0.00
	15	\$302.35	15COMR	\$0.00
	16	\$423.50	16COMR	\$0.00
	20	\$423.50	20COMR	\$0.00
	24	\$423.50	24COMR	\$0.00
	25	\$533.23	25COMR	\$0.00
	30	\$533.23	30COMR	\$0.00
	35	\$651.23	35COMR	\$0.00
	40	\$651.23	40COMR	\$0.00

Rates for Miscellaneous Service for Drop Boxes and Compactor Boxes

Service	Description of Service	Rate per Occurrence
Cancellation Service	All box sizes	\$119.00
Demurrage Charge	Rate for rental of Debris Box or Compactor in excess of 7 days.	\$6.19
Mattress	Mattress - per ton - when found inside debris box at while offloading at disposal facility.	\$110.00
Placement Charge	All box sizes	\$0.00
Relocation Fee	All box sizes	\$96.00
Saturday Service	All box sizes	\$350.00
Steam Cleaning - Compactor	Per Item	\$159.00
Tires - Car	Car Tires - each	\$10.00
Tires - Truck	Truck Tires - each	\$22.00
Toilets	Toilets - ton	\$62.00
TV, Monitors	TV, Monitors - per ton	\$110.00
White Good (Appliances)	All metal appliances - per ton	\$110.00

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

CITY OF MILPITAS
455 E. Calaveras Boulevard
MILPITAS, CA 95035-5411
ATTN: Engineering Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fee, per Government Code
Section 6103

CITY OF MILPITAS, CALIFORNIA

PUBLIC IMPROVEMENT AGREEMENT

E-EN16-0183

Between

CITY OF MILPITAS

a California municipal corporation

and

One Hanson LLC

a California Limited Liability Corporation

**PUBLIC IMPROVEMENT AGREEMENT
ENCROACHMENT PERMIT NO. E-EN16-0183**

I. PARTIES AND DATE.

This Public Improvement Agreement (“Agreement”) is entered into as of this _____ day of _____, 2017 by and between the City of MILPITAS, a California municipal corporation (“City”) and One Hanson LLC, a California Limited Liability Corporation with its principal office located at 1484 Prince Edward Way, Sunnyvale, CA 94087 (“Developer”). City and Developer are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

II. RECITALS.

A. On October 27, 2014, Developer submitted an application for approval of a Site Development Permit and a Conditional Use Permit for a 98,390 square foot self-storage facility at 1 Hanson Ct (the “Project”).

B. On October 28, 2015, the MILPITAS PLANNING COMMISSION conditionally approved Developer’s application for the Project.

C. Developer has not completed all of the work or made all of the public improvements required by Title XI, Chapter 1, Section 7 of City’s municipal code, the conditions of approval for the Project, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

D. Pursuant to Title X, Chapter 1, Section 8 of the City’s municipal code, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Project.

E. Developer’s execution of this Agreement and the provision of the security are made in consideration of City’s approval of the Project.

III. TERMS.

1.0 Effectiveness. This Agreement shall not be effective unless and until all two of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of SANTA CLARA. If the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Project, including, but not limited to, relocation of public water main, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Project ("Public Improvements"). The Public Improvements are more specifically described with the Engineer's Cost Estimates in Exhibit "B," which is attached hereto and incorporated herein by this reference, and as shown on City approved Improvement Plan (Encroachment Permit No E-EN16-0183) on file with the City. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well

as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements as described and as shown on the approved Improvement Plan (Encroachment Permit No. E-EN16-0183) on file with the City are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted by City. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4.0 Construction Schedule. Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public

Improvements within 24 months of the effective date of this Agreement, unless extended pursuant to Section 4.1.

4.1 Extensions. City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the security required under Section 13.0 et seq. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Section 13.0 et seq. of this Agreement.

6.0 Utilities. Developer shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Project in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to the Project.

8.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

9.0 Default; Notice; Remedies.

9.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 10.0 of this Agreement.

9.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

9.3 Other Remedies. No action by City pursuant to Section 9.0 et seq. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

10.0 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable

attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

11.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. Upon the total acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of SANTA CLARA a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 3093. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified by the record engineer and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Security; Surety Bonds. Prior to execution of this Agreement, Developer shall provide City with improvement securities in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision (Section 13.0 et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement. The amount of the improvement security shall be adjusted annually based on the Engineering News-Record Construction Price Index for the San Francisco-San Jose area in November of each year, Developer shall have an affirmative obligation to provide the City with evidence of valid security

no later than November 30 of each year until all improvements required by project conditions have been constructed.

13.1 Performance Improvement Security. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 8.0 et seq. of this Agreement, and to secure Developer's guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance improvement securities in the total amount of One Hundred Sixty Thousand Dollars (\$160,000.00), which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project. All security provided under this section shall be reduced to ten percent (10%) based upon the security's annually adjusted value for the Warranty period. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 12 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project.

13.2 Labor & Material Improvement Security. To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials improvement security in the total amount One Hundred Sixty Thousand Dollars (\$160,000.00), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VIII, shall be licensed to do business in California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of

City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

15.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to Sections 13 et seq. and 14 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

16.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of Agency as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

16.1 Public Works Determination. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

17.0 Insurance.

17.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

17.1.1 General Liability. Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

17.1.2 Business Automobile Liability. Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

17.1.3 Workers' Compensation. Developer and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.

17.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

17.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

17.3 Additional Insured; Separation of Insureds. The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

17.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

17.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must

be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days prior written notice to City.

17.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

18.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

19.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

20.0 General Provisions.

20.1 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

20.2 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

20.4 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY OF MILPITAS

455 E. Calaveras Boulevard
Milpitas, CA 92236
Attn: Greg Chung, PE
Interim Director of Engineering/City Engineer

DEVELOPER:

1484 Prince Edward Way
Sunnyvale, CA 94087
Attn: Bertrand Irissou

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

20.5 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

20.6 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

20.7 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

20.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

20.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

20.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

20.11 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of SANTA CLARA, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

20.12 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs, which shall include, without limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (a) post judgment motions and appeals, (b) contempt proceedings, (c) garnishment, levy, and debtor and third party examination, (d) discovery, and (e) bankruptcy litigation. This section shall survive the termination or expiration of this Agreement.

20.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

CITY OF MILPITAS

By: _____
 (signature)
Steve J. Pangelinan
 (print name)
Acting City Manager

City of MILPITAS

ONE HANSON LLC

By: Bert IRISSOU
 (signature)
Bertrand IRISSOU
 (print name)

Manager
 (title)

APPROVED AS TO FORM:

By: _____
 (signature)
Christopher Diaz
 (print name)

APPROVED AS TO SUFFICIENCY:

By: _____
 (signature)
Greg Chung, PE
 (print name)
Interim Director of Engineering/City Engineer
City of MILPITAS

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SANTA CLARA

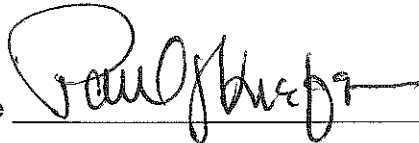
On SEPTEMBER 15, 2017 before me, PAUL J. KIEFER, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared BERTAND IRISSOU,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

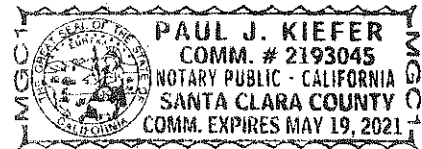
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SANTA CLARA)

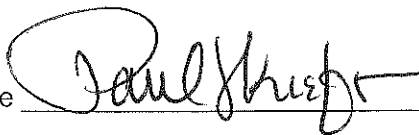
On SEPTEMBER 15, 2017 before me, PAUL J. KIEFER, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared BERTRAND LRISSOU
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

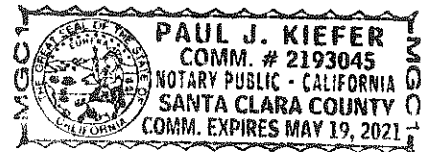


EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT ON THE WESTERLY LINE OF HANSON COURT (FORMERLY NORTH MAIN STREET) SAID POINT BEING DISTANT ON SAID LINE SOUTH 9° 03' 10" EAST 20.00 FEET FROM THE NORTHEASTERLY CORNER OF THE LANDS OF PESTANA AS SAID LANDS AND STREET ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED IN BOOK 334 OF MAPS AT PAGE 54, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING, ALONG SAID LINE NORTH 9° 03' 10" WEST 522.52 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND SHOWN AND DESIGNATED AS BEING A 4.129 ACRE PARCEL OF LAND ON THAT CERTAIN MAP RECORDED IN BOOK 90 OF MAPS AT PAGE 35, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID LINE AND ALONG THE NORTHERLY AND WESTERLY LINES OF THE LAST SAID 4.129 ACRE PARCEL OF LAND SOUTH 86° 47' 34" WEST 408.27 FEET; THENCE SOUTH 21° 23' 10" EAST 577.43 FEET; THENCE LEAVING LAST SAID LINE NORTH 80° 56' 50" EAST 282.81 FEET TO THE POINT OF BEGINNING.

APN: 022-31-020

ARB: 022-03-09, 022-03-10.02

EXHIBIT "B"
ENGINEER'S COST ESTIMATE



ROBERT A. KARN & ASSOCIATES, INC.

707 Beck Avenue, Fairfield, California 94533 Phone: (707) 435-9999 Fax: (707) 435-9988

QUANTITY & COST ESTIMATE FOR OFF-SITE CIVIL IMPROVEMENTS 1 HANSON COURT SELF-STORAGE MILPITAS, CALIFORNIA

Job #: A15052
Date: 11/04/16
Revised: 09/07/17
Rev. 09/12/17

Item	Description	Quantity	Unit	Unit Price	Total
I.	OFF-SITE				
A.	Storm Drain				
1.	15" RCP	67	L.F.	\$54.48	\$3,650.16
2.	24" Storm Drain Inlet	1	Each	\$1,000.00	\$1,000.00
3.	Connect SD to existing SDCB	1	Each	\$700.00	\$700.00
Sub-Total (A)					\$5,350.16
B.	Paving				
1.	Standard Asphalt Pavement (2.5"AC/8.5"AB)	137	S.F.	\$4.00	\$548.00
2.	Concrete Sidewalk	2,495	S.F.	\$5.00	\$12,475.00
3.	6" Concrete Curb & Gutter	64	L.F.	\$15.00	\$960.00
4.	Concrete Driveway	2	L.S.	\$2,500.00	\$5,000.00
5.	Sawcut pavement	244	L.F.	\$2.00	\$488.00
Sub-Total (B)					\$19,471.00
C.	Grading Work				
1.	Remove portions of existing curb & gutter & remove street trees	1	L.S.	\$2,000.00	\$2,000.00
2.	Dust Control	10	Each	\$100.00	\$1,000.00
3.	Cut/Fill		C.Y.	\$6.00	\$0.00
4.	Import		C.Y.	\$12.00	\$0.00
5.	Straw Waddle	600	L.F.	\$1.50	\$900.00
6.	Inlet Protection	4	Each	\$200.00	\$800.00
Sub-Total (C)					\$4,700.00
D.	Landscape				
1.	Landscape (Trim Trees)	1	L.S.	\$1,000.00	\$1,000.00
Sub-Total (D)					\$1,000.00
E.	Sewer				
1.	4" SDR 26 Lateral in Street	17	L.F.	\$34.00	\$578.00
2.	4" Pipe Tap in Street	1	Each	\$290.00	\$290.00
Sub-Total (E)					\$868.00



Item	Description	Quantity	Unit	Unit Price	Total
F.	Ex. 14" City Onsite Water Main Relocation				
1.	14" Ductile Iron Pipe, w/Restrained Joint	620	L.F.	\$105.00	\$65,100.00
2.	Tie into Existing 14" ACWP Water Line for New Alignment	2	Each	\$1,655.00	\$3,310.00
3.	14" Expansion "FLEX TEND" Joint	1	Each	\$8,000.00	\$8,000.00
4.	14" Butterfly Valve	3	Each	\$1,800.00	\$5,400.00
5.	2" Air Valve	1	Each	\$600.00	\$600.00
6.	14" End Cap	1	Each	\$1,000.00	\$1,000.00
7.	Locate, Remove and Dispose of Existing 14" ACWP (Asbestos) Pipe	1	L.S.	\$10,000.00	\$10,000.00
Sub-Total (F)					\$93,410.00
G.	Water District Work				
1.	Standard Asphalt Pavement (2.5"AC/8.5"AB)	43	S.F.	\$4.00	\$172.00
2.	Concrete Sidewalk	316	S.F.	\$5.00	\$1,580.00
3.	6" Concrete Curb & Gutter	35	L.F.	\$15.00	\$525.00
4.	Sawcut pavement	52	L.F.	\$200.00	\$10,400.00
5.	Construct ADA Ramp	1	L.S.	\$1,500.00	\$1,500.00
Sub-Total (G)					\$14,177.00
Sub-Total A, B, C, D, E, F & G					\$138,976.16
15% Contingency					\$20,846.42
GRAND TOTAL					\$159,822.58

EXHIBIT "C"

IMPROVEMENT SECURITIES (SURETY BONDS)

Encroachment Permit No. E-EN16-0183

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$160,000

Surety: Developers Surety and Indemnity Company
Attorney-in-fact: Stephen G. Roddie
Address: 17771 Cowan Suite 100
Irvine, Ca 92614

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$160,000

Surety:
Developers Surety and Indemnity Company

Attorney-in-fact: Stephen G. Roddie
Address: 17771 Cowan Suite 100
Irvine, CA 92614

BOND NO. 652453S
INITIAL PREMIUM: \$3,840.00
SUBJECT TO RENEWAL

CITY OF MILPITAS

PUBLIC IMPROVEMENTS FOR ENCROACHMENT PERMIT NO. E-EN16-0183

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and ONE HANSON LLC ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for relocation of public water main, all grading, roads, paving, curbs and gutters, sidewalks, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, and all other required facilities for Encroachment Permit No. E-EN16-0183 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Pubic Improvements dated October 2nd, 2017 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed thereunder.

NOW, THEREFORE, Principal and Developers Surety and Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City in the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents,

as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.


This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Concord, CA, this 26th day of September, 2017.

One Hanson, LLC

Manager


By:


Manager
BERTRAND KISSON
(print name)

Developers Surety and Indemnity Company

Surety

By:


Attorney-in-Fact
Stephen G. Roddie
(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

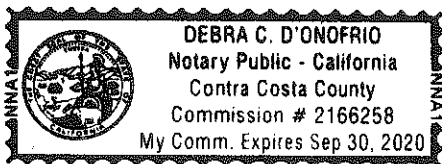
STATE OF CALIFORNIA

County of Contra Costa

On September 26, 2017 before me, Debra C. D'Onofrio, Notary Public,
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Stephen G. Roddie

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature

Debra C. D'Onofrio
Signature of Notary Public Debra C. D'Onofrio

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA**
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

Stephen G. Roddie, Robin S. Westfall, Daniel Livsey, Lindsay Spruill-Iqbal, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this 6th day of February, 2017.

By: *Daniel Young*
Daniel Young, Senior Vice-President

By: *Mark Lansdon*
Mark Lansdon, Vice-President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

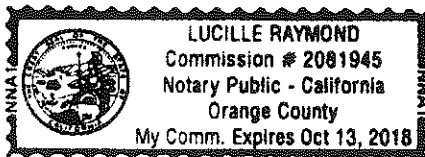
On February 6, 2017 before me, Lucille Raymond, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Daniel Young and Mark Lansdon
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Lucille Raymond*
Lucille Raymond, Notary Public



Place Notary Seal Above

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 26th day of September, 2017.

By: *Cassie J. Barrisford*
Cassie J. Barrisford, Assistant Secretary

ATS-1002 (02/17)



BOND NO. 652453S
INITIAL PREMIUM: Included on Performance Bond
SUBJECT TO RENEWAL

CITY OF MILPITAS
PUBLIC IMPROVEMENTS FOR ENCROACHMENT PERMIT NO. E-EN16-0183
LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of MILPITAS, California ("City") and ONE HANSON LLC ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for relocation of public water main, all grading, roads, paving, curbs and gutters, sidewalks, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, and all other required facilities for Encroachment Permit No. E-EN16-0183 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Agreement for Completion of Public Improvements dated October 2nd, 2017 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 15 (commencing with section 3082) of Part 4 of Division 3 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and Developers Surety and Indemnity Company ("Surety"), a corporation organized and existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS, (\$160,000), said sum being not less than 100% of the total cost of the Public Improvements under

the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Concord, CA, this 26th day of September, 2017.

One Hanson, LLC

Principal

By:



Manager

BERTRAND RISSON
(print name)

Developers Surety and Indemnity Company

Surety

By:


Attorney-in-Fact

Stephen G. Roddie

(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

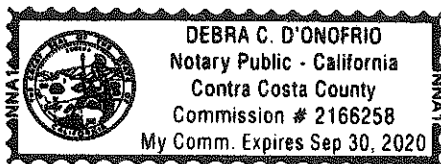
STATE OF CALIFORNIA

County of Contra Costa

On September 26, 2017 before me, Debra C. D'Onofrio, Notary Public,
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Stephen G. Roddie

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal

Signature

Signature of Notary Public Debra C. D'Onofrio

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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☐ Corporate Officer — Title(s): _____
☐ Partner ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
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☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer is Representing: _____

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
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Signer is Representing: _____

**POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA**
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

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Stephen G. Roddie, Robin S. Westfall, Daniel Livsey, Lindsay Spruill-Iqbal, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

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RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this 6th day of February, 2017.

By: *Daniel Young*
Daniel Young, Senior Vice-President
By: *Mark Lansdon*
Mark Lansdon, Vice-President



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State of California
County of Orange

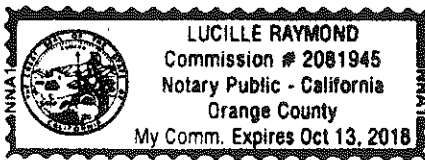
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WITNESS my hand and official seal.

Signature *Lucille Raymond*
Lucille Raymond, Notary Public



Place Notary Seal Above

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 26th day of September, 2017.

By: *Cassie J. Berrisford*
Cassie J. Berrisford, Assistant Secretary

ATS-1002 (02/17)



RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD17-0009 TO CONSTRUCT A NEW CARPORT WITH ROOFTOP SOLAR ON A 5.1 ACRE SITE AT 430 EVANS ROAD**

WHEREAS, on March 31, 2017, an application was submitted by Tiffany Swisa of NRG Clean Power (“Applicant”), for a development proposal to allow the construction of a 1,072 square foot carport with a rooftop solar photovoltaic system on a 5.1 acre site at 430 Evans Road (APN: 029-35-023) (the “Project). The Project site has a General Plan Designation of Hillside Very Low Density, and is zoned Single Family Residential - Hillside; and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), which assessment determined that the proposed Project is exempt from CEQA review pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines; and

WHEREAS, on August 23, 2017, a duly-noticed public hearing was held by the City of Milpitas Planning Commission on the subject Project application, at which time all those in attendance were given the opportunity to speak on the Project and the Planning Commission recommended approval of the Project to the City Council subject to Conditions of Approval; and

WHEREAS, on October 3, 2017, a duly-noticed public hearing was held by the City of Milpitas City Council on the subject Project permit application, at which time all those in attendance were given the opportunity to speak on the Project.

NOW THEREFORE, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1: Recitals

The City Council has considered the full record before it, which may include, but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and incorporated herein by reference.

SECTION 2: CEQA Finding

The Project is exempt from further environmental review under the CEQA pursuant to Section 15303 for “New Construction or Conversion of Small Structures,” which includes at subsection (e) “Accessory (appurtenant) structures, including garages, carports, patios, swimming pools, and fences,” because it can be seen with certainty that there is no possibility that these actions may have a significant effect on the environment. The Project’s proposed new construction of a carport is within a residentially zoned area.

SECTION 3: Site Development Permit Findings (Section XI-10-57.03(F)(1))

The City Council makes the following findings based on the evidence in the public record in approving Site Development Permit No. SD17-0009:

- 1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The architectural design and site planning of the proposed carport are aesthetically compatible with the existing residence, as well as the neighboring homes. It will continue to add to the diversity of architectural styles to the neighborhood, while minimizing changes to the natural topography of the site. The proposed carport also incorporates earth tone colors, complementing the surrounding color palette.

- 2. The project is consistent with the Milpitas Zoning Ordinance.*

As demonstrated in the tables below, the proposed carport meets the development standards of the Single Family Hillside Zoning District for setbacks, height requirements, impervious surfaces, and grading.

Table 1
Summary of Development Standards

Standards	Required	Proposed	Complies
Front Setback	25 ft. minimum	201 feet and 7 inches	Yes
Side Yard Setback	40 ft. minimum	116 feet and 7 inches	Yes
Rear	40 ft. minimum	260 feet and 11 inches	Yes
Size of Main Residence	10,000 sq. ft. maximum	No change	Yes
Size of Accessory Structures	1,200 sq. ft. maximum per structure	1,072 sq. ft.	Yes
Impervious Surfaces	10% of the lot area of 22,194.7 sq. ft.	No change	Yes
Building Height (Maximum)	17 ft. west of crestline; 27 ft. east of crestline	14 feet and 3 inches	Yes

Due to the subject property's location, the project is also required to comply with the development standards in the City's Hillside Combining District. Per Milpitas Municipal Code Section 45.09-7, the Planning Commission and City Council shall consider the following guidelines in their review of this process. Staff believes the home is consistent with the Hillside Architectural Guidelines as demonstrated. See Table 2 below for consistency.

Table 2
Hillside Zoning Ordinance Compliance

Site and Architectural Guidelines <i>Section 45.09-7</i>	Consistency Finding
<p><i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i></p>	<p>Consistent. This finding can be met because the project site is located at the foot of the hillside and, by minimizing heights, the project has minimal potential of interfering with views of the hillside. The proposed carport is on a 5.1 acre parcel sitting more than 40 feet back from their property line with a minimum of 200 feet between the closest neighboring home, and therefore, will not interfere with privacy.</p>
<p><i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i></p>	<p>Consistent. The project does not propose to remove any trees from the site. The proposed carport will not require any new grading or new pavement on the site, and therefore, will be preserving the natural landscape of the property.</p>
<p><i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and /or accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i></p>	<p>Consistent. The proposed carport is setback more than 200 feet from the front property line and will be screened by existing landscaping and trees, and as a result, will continue to minimize the perception of excessive bulk.</p>
<p><i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i></p>	<p>Consistent. This finding can be met in that the carport is proposed to be one story, will not exceed 17 feet in height from grade, and is set back further than what the Municipal Code requires. The low profile design, along with the flat roof and proper site placement, together ensure that the natural light and air for the adjacent properties and their ability to utilize solar energy will not be impaired.</p>
<p><i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i></p>	<p>Consistent. The construction of the carport will not involve any additional grading on the project site. The impact will be minimal and therefore, meets the grading ordinance criteria.</p>

Site & Architectural Design

The project is designed in a contemporary style, which adds to the diversity of the neighborhood. The carport will be composed of galvanized materials and will be colored earthy gray. All exterior materials and finishes work together as a palette of earth-tone colors, creating harmony with the surroundings. The colors used and materials are complementary to the neighboring residences and within an earth-tone range.

Grading and Landscaping

The construction of the proposed carport will not require any new grading and landscaping for the site. Therefore, the Project's impact in this regard will be minimal.

Crestline Zone of Protection

In an effort to protect the quality of views of the hills from the valley floor, development standards related to crestlines have been incorporated into the Milpitas Municipal Code. Per Municipal Code Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes immediately below, when viewed from the valley floor. The crestline zone of protection is the area westerly of the perceived crestline and between the perceived crestline and an elevation one hundred feet below. No structure may visually intrude into the crestline zone of protection area. Since the Project is located at the bottom of the hillside, west of the perceived crestline, and the height of the proposed carport is less than the maximum permitted height limit stipulated by the Municipal Code, the Project will not be visible from the valley floor, nor will it visually intrude into the Crestline Zone of Protection.

3. The project is consistent with the Milpitas General Plan.

The Project is consistent with the Milpitas General Plan, and particularly with Policy No. 2.a-I-23, which limits new development in the Hillside Area to only to Very Low Density Residential, open space and park uses. The Project meets this finding, as the Project site is a part of an approved single-family home and will not be adding new dwelling units. In addition, the Project likewise conforms to Policy No. 2.a-I-25, which protects the natural character of the hillside by, among other things, requiring that grading is minimized. The Project is consistent with this policy in that it will not require any additional grading or new pavement on the site. The proposed carport is designed to fit in with the existing features of the property and reduces the visual impact as viewed from the valley floor.

4. In the case of a project located within a Specific Plan, the following additional finding shall be made: The project is consistent with the Specific Plan.

The Project is not located within a Specific Plan. Accordingly, this finding does not apply to the Project.

SECTION 4: City Council Approval

Based on the foregoing, the City Council hereby approves Site Development Permit No. SD17-0009, to allow the construction of a carport with a rooftop photovoltaic system in the hillside district, based on the above findings and subject to the Conditions of Approval attached hereto as **Exhibit A** incorporated herein.

PASSED AND ADOPTED this _____ day of _____ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT A
CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD17-0009
430 EVANS ROAD, (APN 029-31-003)

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. Site Development Permit No. SD17-0009 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed. **(P)**
2. Modifications to project. Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the Permittee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. **(P)**
3. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Municipal Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit. **(P)**
4. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following: **(P)**
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
5. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Municipal Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Municipal Code, an activity permitted by this Permit shall be deemed to have commenced when the project: **(P)**
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
6. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Municipal Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
7. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable,

Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit. **(P)**

8. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). **(P)**
9. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to City. There is no vesting of any fees or charges with the adoption of this Resolution. **(P)**
10. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution. **(P)**
11. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
12. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit. **(P)**
13. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. **(P)**
14. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code. **(P)**
15. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.

16. Conformance with Approved Plans. Permittee shall develop the approved project in conformance with the approved plans approved by the City Council on October 3, 2017, in accordance with these Conditions of Approval. Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, Permittee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**
17. Response to Conditions of Approval. Permittee shall provide a written response to comments upon submittal for building permit application. The responses should clearly indicate how each condition of approval has been addressed in the plans and shall note the appropriate plan sheet. **(P)**
18. Provision of Conditions of Approval. Prior to the issuance of a building permit, the owner or designee shall include within the four first pages of the working drawings for a plan check, a list of all conditions of approval imposed by the final approval of the project. **(P)**

Fire Department

19. Compliance with the Fire Code. The project/development shall comply with the requirements of the Fire Department and the California Fire Code, as set forth in the Fire Department's Memorandum, dated June 12, 2017, as may be amended by the City of Milpitas. Changes to the site plan and/or internal circulation shall be reviewed and approved by the Fire Department. **(F)**

Building Department

20. Compliance with Building Code. The Project shall comply with the requirements of the 2016 CBC, CMC, CEC, CPC, Green Building Standards Code, California Energy Code and the Milpitas Municipal Code, as codified on the date the building permit for the project is granted. **(B)**

(P) = Planning

(B) = Building

(F) = Fire Prevention

(CA) = City Attorney

MEETING MINUTES

MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA

Wednesday, August 23, 2017

- | | |
|--|--|
| I. PLEDGE OF ALLEGIANCE | Chair Mandal called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance. |
| II. ROLL CALL/ SEATING OF ALTERNATE | <p>Present: Chair Mandal, Vice Chair Madnawat, Commissioners Sandhu, Ciardella, Maglalang, Mohsin, Chua</p> <p>Absent: Morris (excused)
Alternate Member Chua was seated for voting.</p> <p>Staff: Bradley Misner, Katy Wisinski, Lillian Hua</p> |
| III. PUBLIC FORUM | Chair Mandal invited members of the audience to address the Commission and there were no speakers. |
| IV. APPROVAL OF MEETING MINUTES | <p>Chair Mandal called for approval of the August 9, 2017 meeting minutes of the Planning Commission.</p> <p>Motion to approve Planning Commission meeting minutes.</p> <p>Motion/Second: Commissioner Maglalang/Commissioner Sandhu</p> <p>AYES: 5</p> <p>NOES: 0</p> <p>ABSTAIN: 2 Ciardella, Mohsin</p> |
| V. ANNOUNCEMENTS | <p>Planning Director Bradley Misner said staff sent a poll to check the availability of the commissioners for a special meeting but the meeting is no longer necessary, and he thanked the commissioners for their willingness to meet.</p> <p>Commissioner Maglalang requested that the tree ordinance be agendized for a future meeting and made reference to protected trees and the June 22, 2016 Planning Commission meeting minutes.</p> |
| VI. CONFLICT OF INTEREST | <p>Deputy City Attorney Katy Wisinski asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.</p> <p>Commissioner Sandhu said he lives within 500 feet of 430 Evans Road and recused himself from Item IX-2.</p> |

**VII. APPROVAL OF
AGENDA**

Chair Mandal asked if staff or Commissioners had changes to the agenda.

Mr. Misner said Item IX-1 was being continued at the request of the applicant, and he recommended reversing the order of Items IX-2 and IX-3 so that Commissioner Sandhu could be present for the first item and then recuse himself and go home.

The agenda was approved as amended.

**VIII. CONSENT
CALENDAR
NO ITEMS**

IX. PUBLIC HEARING

IX-1 TENTATIVE PARCEL MAP – 1504-1620 S. MAIN STREET – P-MM17-0001: A request to approve a tentative parcel map entitlement for 1504-1620 S. Main St.

ITEM CONTINUED

IX-2 HILLSIDE SOLAR CARPORT – 430 EVANS ROAD – P-SD17-0009: A request for a Site Development Permit to construct a new carport with rooftop solar in the hillside.

This item was heard after Item IX-3.

Commissioner Sandhu left the council chambers at 7:50 PM

Project Planner Lillian Hua showed a presentation and reviewed the project.

Commissioner Mohsin asked if the carport will be visible from the street and Ms. Hua said it will be visible from Old Calaveras Road but not from Evans Road due to trees and shrubbery.

Chair Mandal asked if sunlight would reflect onto nearby properties and Ms. Hua was unsure but a representative from NRG Solar Company was present. He said the solar panels are tilted toward the sun and would be higher than the homes so reflections should not be an issue, and added that his company goes above and beyond any requirements for solar panels and he has never received complaints from neighbors about them.

Chair Mandal opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Chua/Commissioner Maglalang

AYES: 6

NOES: 0

Motion to Adopt Resolution No. 17-024 recommending approval of Site Development Permit SD17-0009 to the City Council, subject to the attached Conditions of Approval.

Motion/Second: Vice Chair Madnawat/Commissioner Ciardella

AYES: 6

NOES: 0

IX-3

SPRIG CENTER/MCCARTHY BLVD – APN 022-30-048 – P-SD17-0003, P-UP17-0005, P-EA17-0001: A request for a Site Development Permit, Conditional Use Permit, and Environmental Assessment for the construction of six structures, including a retail store, gas station with car wash and fueling canopy, and a mini-storage complex, totaling 188,011 square feet on a 9.34 acre site.

This item was heard before Item IX-2.

Commissioner Ciardella and Chair Mandal disclosed that they met with the developer of this project.

Commissioners Chua and Ciardella disclosed that they attended the groundbreaking ceremony for the McCarthy Creekside project.

Ms. Wisinski asked each commissioner who made a disclosure to confirm that they could fairly and impartially evaluate the hearing item before them and each commissioner stated they could.

Project Planner Lillian Hua showed a presentation and reviewed the project.

Vice Chair Madnawat asked why an EIR was prepared in 2009 and Ms. Hua said it was for the McCarthy Ranch mixed-use project south of this project site, and was prepared in anticipation that eventually all of the vacant land would be developed.

Vice Chair Madnawat asked if there were any findings that required mitigation and Ms. Hua said that as part of the resolution and conditions of approval (COA) the applicant is required to comply with the mitigation measures from the 2009 EIR.

Vice Chair Madnawat does not believe one break in the divider is large enough to accommodate the traffic. Ms. Hua said there is no plan to widen the road but the City Traffic Engineer evaluated the project and one traffic signal was required in the traffic study conducted as part of this project review.

Commissioner Maglalang asked what the statute of limitations is for the 2009 environmental assessment. Ms. Wisinski said when the 2009 EIR was completed it was anticipated that projects would come in over a number of years, and as they come in staff evaluates if there are any new impacts or mitigation measures that need to be changed to determine whether or not the EIR still stands. It has been determined that the proposed project is still within the scope of the 2009 EIR.

In regards to Vice Chair Madnawat's traffic questions, Mr. Misner referenced COA #29 G on page 14 of the resolution which addresses the removal of approximately 300 feet of the existing striped center turn lane, replacing it with a new, raised median island, including a left turn lane in the north bound of McCarthy Blvd to the main site driveway.

Ms. Hua said COA #29 C had indicated that full street width asphalt concrete would be needed; however, staff worked with the applicant and revised the condition and the applicant will only be required to micro-surface up to the median island.

The project architect was present and does not anticipate any issues with the left turn lane. He said the traffic report was completed in 2009 and the traffic load they are currently bringing to the site is less than half of what that report was assuming.

Vice Chair Madnawat asked if there will be a barrier, such as a wall, to prevent wildlife from entering the site and the project architect said there will be a fence that he believes will do the job.

Mr. Misner said that while the initial traffic analysis was conducted with the EIR in 2009, the applicant did have a traffic study completed in the spring of 2017 which found that the traffic generation would be far less than anticipated in the EIR.

Chair Mandal opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Maglalang/Commissioner Chua

AYES: 7

NOES: 0

Commissioner Sandhu motioned to approve the project. Vice Chair Madnawat asked if he was amenable to having staff look into a barrier for wildlife.

Ms. Wisinski confirmed that Commissioner Sandhu's motion included the change to COA #29 C whereby the applicant will be required to improve the roadway to the median as opposed to the full width of the road.

Ms. Wisinski asked that Vice Chair Madnawat repeat his request and he said the intent is to provide a barrier to prevent wildlife from coming onto the parking lot and getting killed. Ms. Wisinski asked the architect to return and explain what the nature of the proposed fencing will be to determine if this is something that staff should explore further or might already be taken care of with the proposed fencing. The project architect said the water district does not want a wall and they have been directed not to install one. Vice Chair Madnawat said it was unnecessary to add a condition for a barrier.

Motion to Adopt Resolution No. 17-023 approving Site Development Permit P-SD17-0003, Conditional Use Permit P-UP17-0005, and Environmental Assessment P-EA17-0001, subject to the attached Conditions of Approval.

Motion/Second: Commissioner Sandhu/Commissioner Ciardella

AYES: 7

NOES: 0

X. NEW BUSINESS

NO ITEMS

XI. ADJOURNMENT

The meeting was adjourned at 8:08 PM.

Motion to adjourn to the next meeting.

Motion/Second: Vice Chair Madnawat/Commissioner Mohsin

AYES: 6

NOES: 0

*Meeting Minutes submitted by
Planning Commission Secretary Elia Escobar*



MILPITAS PLANNING COMMISSION STAFF REPORT

August 23, 2017

APPLICATION: **NEW HILLSIDE CARPORT – Site Development Permit No. SD17-0009** – A request for a Site Development Permit to construct a new carport with rooftop solar on a 5.1 gross acre lot, zoned R1-H Hillside Combining District.

RECOMMENDATION: **Staff recommends that the Planning Commission adopt Resolution No. 17-024, recommending approval of Site Development Permit SD17-0009 to the City Council, subject to the attached Conditions of Approval.**

LOCATION:

Address/APN:

430 Evans Road (APN 029-31-003)

Area of City:

North of East Calaveras Boulevard, south of Jacklin Road, on the Eastside of Evans Road

PEOPLE:

Project Applicant:

NRG Clean Power

Property Owner:

Peter and Kim Herrera/Parker

Project Planner:

Lillian Hua

LAND USE:

General Plan Designation:

Hillside Very Low Density (HVL)

Zoning District:

Single Family Residential-Hillside (R1-H)

Site Area:

5.1 acres

ENVIRONMENTAL:

Categorically exempt from further environmental review pursuant to Section 15303(e) of the California Environmental Quality Act (CEQA) for construction of new, small accessory structures, including garages, carports, patios, swimming pools, and fences.

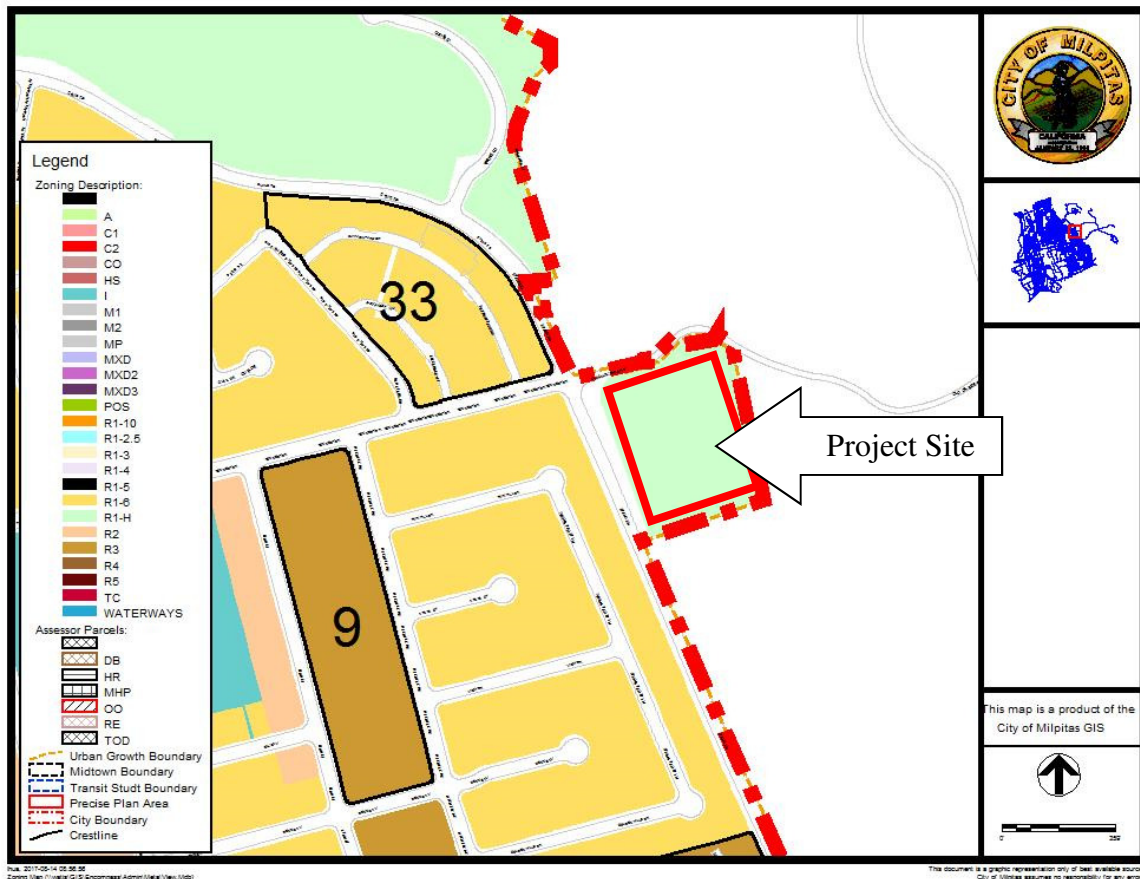
EXECUTIVE SUMMARY

The applicant is requesting a Site Development Permit to construct a 1,072 square foot carport with a rooftop solar photovoltaic system, adjacent to an existing bungalow and residence, on a 5.1 gross acre lot in the hillside.

Map 1
Project Location



Map 2 Zoning Map



BACKGROUND

History

The site was originally established as a farm in the mid-1890's by the Rose family, prominent Milpitas pioneers. Prior to the 1920's, the Belshaw family built a house on the site. Over the years, the original house was added until it reached its present grand size. Kim Parker purchased the home in 1987, restored the historic home and renamed it the "Last Word Ranch." The home is currently on the City of Milpitas's Historic Inventory List.

The Application

The following is a summary of the applicant's request:

- ***Site Development Permit:*** To allow the construction of a 1,072 square foot carport with a rooftop solar photovoltaic system on the hillside.

The Planning Commission generally has the authority to approve Site Development Permits. However, because the Project site is in a Hillside Combining District, this Site Development

Permit must be submitted to the City Council for approval, per Municipal Code Section XI-10-57.03(B)(1)(b).

PROJECT DESCRIPTION

Overview

The project site is a developed 5.1 acre parcel located along Evans Road. The property and neighboring properties are zoned Single Family Residential – Hillside. The project site is located adjacent to the City and Santa Clara County’s boundary line. A vicinity map of the subject site location is included on the previous page.

The applicant is requesting a Site Development Permit to construct a 1,072 square foot carport with a rooftop solar photovoltaic system on a hillside lot.

Location and Context

The project site is located in the northeastern portion of the City of Milpitas in the hillside area. The following table provides a summary of the Zoning and Land Uses surrounding the site:

Table 1:
Surrounding Zoning and Land Uses

	General Plan	Zoning	Existing Use
Subject Site	Hillside Very Low Density (HVL)	Single-Family Residential-Hillside (R1-H)	Single-family home
North	Hillside Very Low Density (HVL)	--- (Santa Clara County)	Single-family home
South	Hillside Very Low Density (HVL)	--- (Santa Clara County)	Vacant
East	Hillside Very Low Density (HVL)	--- (Santa Clara County)	Vacant
West	Single Family Low Density (SFL)	Single-Family Residential (R1-6)	Single-family home

PROJECT ANALYSIS

General Plan and Zoning Conformance

The General Plan designation for the project site is Hillside Very Low Density (HVL). The General Plan details the goals, objectives and policies for the City’s Hillside Area. It is characterized by gentle to steep slopes, grassy terrain with some chaparral and trees, wildlife, geologically unstable areas, the Ed R. Levin County Regional Park, and a feeling of remoteness from the more urban portions of the city. The Hillside Very Low Density designation allows a maximum of one (1) housing unit per ten (10) gross acres. The project is in conformance with the policies and standards in the City’s General Plan policies, as outlined in the following table:

Table 2: General Plan Consistency

Policy	Conformance
<p><i>2.a-I-23 Limit new development in the Hillside Area to only to Very Low Density Residential, open space and park uses.</i></p>	<p>Consistent. The proposed project is consistent with this guiding principle in that there is only one residential home on the hillside lot. The addition of a carport does not affect the maximum permitted density and therefore, is still maintaining the very low density development standards.</p>
<p><i>2.a.I-25 To ensure that development in the foothills is in keeping with the natural character of the hillside, and that views are protected, require city review and approval of all proposed development or major alterations to existing development in the hillside. As part of the review, ensure that:</i></p> <ul style="list-style-type: none"> • <i>Landscaping is of a type indigenous to the area;</i> • <i>That building designs, materials, and colors blend with the environment; and</i> • <i>Grading is minimized and contoured to preserve the natural terrain quality</i> 	<p>Consistent. The proposed project’s carport will be composed of galvanized materials, colored earthy gray, which will blend with the environment. The scope of work will not involve any grading and it will not add new pavement.</p>

The site is zoned Hillside Single Family Residential (R1-H). The “H” Hillside Combining District intends to promote and encourage the orderly development of the hillside area of the City by the application of regulations and requirements established to meet the particular constraints associated with development of hillside areas, including, but not limited to, geologic problems, slope, safe access and visibility. The proposed project meets the development standards for the R1-H zoning district.

Development Standards

Table 3 demonstrates the project’s consistency with the applicable development standards of the R1-H zone.

Table 3:
Summary of Development Standards

Standards	Required	Proposed	Complies
Front Setback	25 ft.	201 feet and 7 inches	Yes
Side Yard Setback	40 ft.	116 feet and 7 inches	Yes
Rear	40 ft.	260 feet and 11 inches	Yes
Size of Main Residence	Maximum of 10,000 sq. ft.	No change	--
Size of Accessory Structures	1,200 sq. ft. maximum per structure	1,072 sq. ft.	Yes
Impervious Surface Coverage	10% of the lot area of 22,194.7 sq. ft.	No change	--
Building Height (Maximum)	17 ft. west of crestline; 27 ft. east of crestline	14 feet and 3 inches	Yes

Due to the subject property's location, the project is also required to comply with the development standards in the City's Hillside Combining District. Per Municipal Code Section XI-10-45.09-7, the Planning Commission and City Council shall consider the following guidelines in its review. Staff believes the proposed carport is consistent with the Hillside Architectural Guidelines as demonstrated below. See Table 4 below for consistency.

Table 4
Hillside Zoning Ordinance Compliance

Site and Architectural Guidelines <i>Section XI-10-45.09-7</i>	Consistency Finding
<i>(a) Avoid unreasonable interference with Views and Privacy. The height, elevations and placement on the site of the proposed main or accessory structure, when considered with reference to the nature and location of residential structures on adjacent lots, will avoid unreasonable interference with views and privacy.</i>	Consistent. The project site is located at the foot of the hillside and by minimizing heights, the project has a minimal potential of interfering with views of the hillside. The proposed carport is on a 5.1 acre parcel sitting more than 40' back from their property line with a minimum of 200' between it and the closest neighboring home and therefore will not interfere with privacy.
<i>(b) Preserve Natural Landscape. The natural landscape will be preserved insofar as practicable by designing structures to follow the natural contours of the site and minimizing tree and soil removal.</i>	Consistent. The project is not proposed to remove any trees from the site. The proposed carport will not require any new grading or new pavement on the site, and therefore, will be preserving the natural landscape of the property.
<i>(c) Minimize Perception of Excessive Bulk. The design of the proposed main and/or</i>	Consistent. The proposed carport is setback more than 200 feet from the front property line and will

Site and Architectural Guidelines <i>Section XI-10-45.09-7</i>	Consistency Finding
<i>accessory structure(s) in relation to the immediate neighborhood should minimize the perception of excessive bulk.</i>	be screened by existing landscaping and trees, and as a result, will continue to minimize the perception of excessive bulk.
<i>(d) Impairment of Light and Air. The proposed main or accessory structure(s) shall not unreasonably impair the light and air of adjacent properties nor unreasonably impair the ability of adjacent properties to utilize solar energy.</i>	Consistent. The carport is proposed to be one story, will not exceed 17 feet in height from grade, and is set back further than what the Municipal Code requires. The low profile design, along with the flat roof and proper site placement, together ensure that the natural light and air for the adjacent properties and their ability to utilize solar energy will not be impaired.
<i>(e) Grading. All grading shall be kept to an absolute minimum and shall comply with the grading ordinance criteria.</i>	Consistent. The construction of the carport will not involve any additional grading on the project site. The impact will be minimal and therefore, meets the grading ordinance criteria.

Site & Architectural Design

The project is designed in a contemporary style, which adds to the diversity of the neighborhood. The carport will be composed of galvanized materials and will be colored earthy gray. All exterior materials and finishes work together as a palette of earth tone colors, creating harmony with the surroundings. The colors used and materials are complementary to the neighboring residences and within an earth tone range.

Grading and Landscaping

The construction of the proposed carport will not require any new grading and landscaping for the site. Therefore, the project's impact in this regard will be minimal.

Crestline Zone of Protection

In an effort to protect the quality of views of the hills from the valley floor, development standards related to crestlines have been incorporated into the Zoning Code. Per Municipal Code Section XI-10-45.06, the purpose of the crestline zone of protection is to preserve the natural quality of the crestline and the slopes immediately below, when viewed from the valley floor. The crestline zone of protection is the area westerly of the perceived crestline and between the perceived crestline and an elevation one hundred feet below. No structure may visually intrude into the crestline zone of protection area. Since the project is located at the bottom of the hillside, west of the perceived crestline, and the height of the proposed carport is less than the maximum height permitted by the Municipal Code, the project will not be visible from the valley floor, nor will it visually intrude into the Crestline Zone of Protection.

Rooftop Solar Energy System

In accordance with state law, the Milpitas Municipal Code provides a ministerial approval process to review applications for small residential rooftop solar energy systems. (MMC II-1.5, 'Streamlined Solar Permitting.') The rooftop solar proposed for the new carport is thus subject to review and approval through that process, and is not considered part of the SDP.

FINDINGS FOR APPROVAL (OR DENIAL)

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff has found that the proposed project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

Site Development Permit Findings (Section XI-10-57-03-1(F))

- 1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As described within the staff report, the architectural design and site planning of the proposed carport is aesthetically compatible with the neighboring homes. The proposed carport also incorporates earth tone colors, complementing the surrounding color palette.

- 2. The project is consistent with the Milpitas Zoning Ordinance in that:*

As described within the staff report, the proposed home meets the development standards in the Single Family Hillside Zoning district, including requirements pertaining to setbacks, height requirements, impervious surface coverage, and grading.

- 3. The project is consistent with the Milpitas General Plan in that:*

The project is consistent with the Milpitas General Plan, and particularly with Policy No. 2.a-I-23, which limits new development in the Hillside Area to only to Very Low Density Residential, open space and park uses. The project meets this finding, as the project site is a part of an approved single-family home and will not be adding new dwelling units. In addition, the project likewise complies with General Plan Policy No. 2.a-I-25, which protects the natural character of the hillside by, among other things, requiring that grading is minimized. The project is consistent with this policy in that it will not require any additional grading or new pavement on the site. The proposed carport is designed to fit in with the existing features of the property and reduces the visual impact as viewed from the valley floor.

ENVIRONMENTAL REVIEW

A categorical exemption pursuant to Section 15303(e) of the CEQA Guidelines – New Construction or Conversion of Small Structures, applies to this project. Section 15303(e) includes, but is not limited to, the construction of accessory structures including garages, carports, patios, swimming pools, and fences. The project's proposed new construction of a carport with a rooftop solar photovoltaic system are within a residentially zoned area.

PUBLIC COMMENT/OUTREACH

Staff provided public notice for the application in accordance with City and State public noticing requirements. At the time of writing this report, there have been no inquiries from the public. A notice was published in the Milpitas Post on August 11, 2017. In addition, 68 notices were sent to owners and occupants within 300 feet of the project site. A public notice was also provided on the project site, on the City's Website, www.ci.milpitas.ca.gov, and posted at City Hall.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing to receive comments;
2. Close the Public Hearing; and
3. Adopt Resolution 17-024, recommending the City Council approve the Site Development Permit No. SD17-0009, to allow the construction of a carport with a rooftop solar photovoltaic system in the hillside district, subject to the findings and attached Conditions of Approval.

ATTACHMENTS

- A: Resolution 17-024
- B: Project Plans
- C. Fire Department Memorandum, dated June 12, 2017

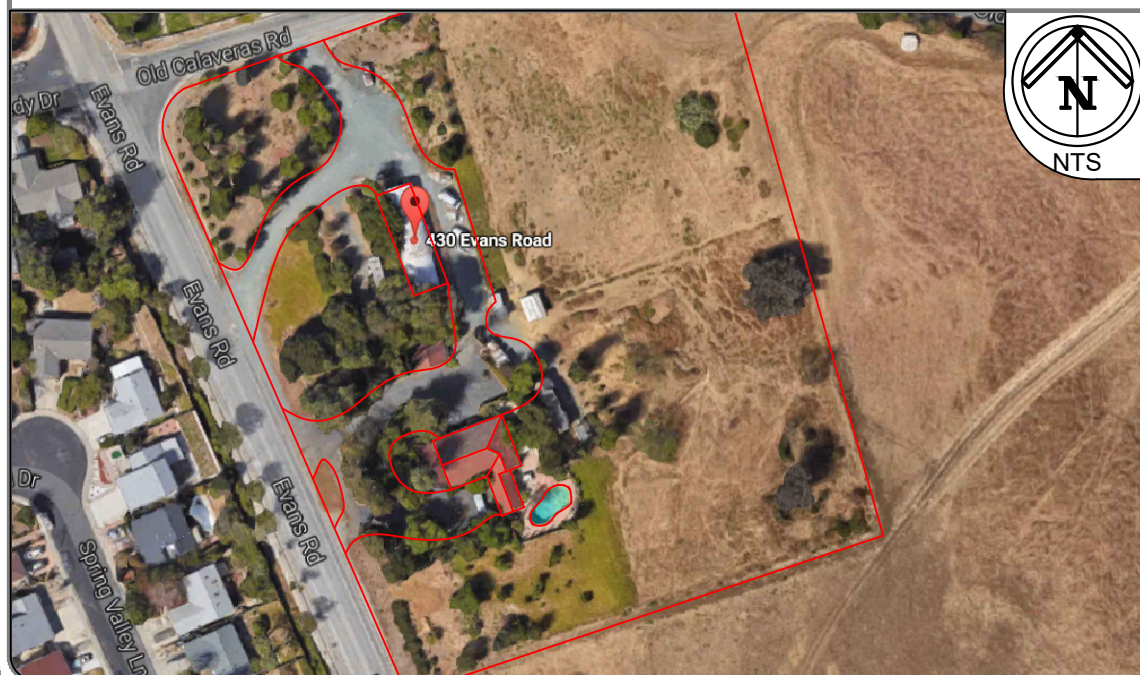
PETER & KIM HERRERA/PARKER

17.25 kW DC SOLAR PHOTOVOLTAIC SYSTEM

430 EVANS RD MILPITAS 95035

THIS JOB TO COMPLY WITH 2016 CALIFORNIA RESIDENTIAL, MECHANICAL, ELECTRICAL, PLUMBING, ENERGY, AND GREEN BUILDING STANDARD CODE (AS APPLICABLE AND AS AMENDED BY THE LOCAL JURISDICTION)

VICINITY MAP



SCOPE OF WORK:

INSTALLATION OF (50) SOLAREEDGE SW345 MONO XL & (2) SOLAREEDGE SE7600A-US,

(17.25 KW DC PHOTOVOLTAIC SYSTEM)

Main Panel Upgrade / Main Breaker Downgrade: MPU

OCCUPANCY TYPE: R-3
CONSTRUCTION TYPE: V-B
UNSPRINKLERED
AHJ: CITY OF MILPITAS

SHEET INDEX:

E1 - COVER
E2 - NOTES
E3 - SIGNAGE
E4 - PROPERTY PLAN
E5 - SITE PLAN
E6 - STRUCTURAL PLAN
E6.1- STRUCTURAL, ELEVATIONS
E6.2 ATTACHMENT DETAIL
E7 - SINGLE LINE DIAGRAM
E7.1- ELECTRICAL CALCULATIONS
E7.2- GROUNDING DETAILS
E7.3 LABELING
E7.4 EQUIPMENT ELEVATION
E7.5 TRENCHING DETAIL
E7.6 VOLTAGE DROP CALCULATION



Yossi Tamir
Yossi Tamir LIC#781353-B

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Canoga Park, CA 91303
Office: 800-698-6627
Fax: 818-475-0118
www.nrgcleanpower.com

PETER & KIM HERRERA/PARKER

430 EVANS RD
MILPITAS 95035

PROJECT:

DRAWN BY: _____
DATE: 3/24/2016
REV DATE: _____
REV NO: 0
CORRECTED BY: _____
SHEET NUMBER:

E1


SOLAR PHOTOVOLTAIC SYSTEM NOTES:

1. All materials, equipment, installation and work shall comply with the following applicable codes:
-2016 CBC / 2015 IBC
-2016 CRC / 2015 IRC
-2016 CEC / 2014 NEC
-2016 CMC / 2015 UMC
-2016 CPC / 2015 UPC
-2016 CFC / 2015 IFC
-2008/2013 Building Energy Efficiency Standards
-Authority Having Jurisdiction
-2013 California Health and Safety Code,
-IEEE Standard 929
-UL Standard 1741
-2013 Residential Code
-Manufacturers' listings and installation Instructions

2. All work to comply with CEC Article 690
3. Utility shall be notified before activation of PV System
4. Removal of a utility-interactive inverter or other equipment shall not disconnect the building connection between the grounding electrode conductor and the PV source and/or output circuit grounded conductor
5. All PV system components shall be listed by a recognized testing agency
6. Wiring materials shall comply with maximum continuous current output at 25° C; Wire shall be wet rated at 90°C
7. Exposed photovoltaic system conductors on the roof will be USE-2 or PV Type Wire.
8. All exterior conduit, fittings, and boxes shall be rain-tight and approved for use in wet locations (NEC 314.15)
9. All metallic raceways and equipment shall be bonded and electrically continuous (NEC 250.90, 250.96)
10. For ungrounded systems, the photovoltaic source and output circuits shall be provided with a ground-fault protection device or system that detects a ground fault, indicates that fault has occurred, and automatically disconnects all conductors or causes the inverter to automatically cease supplying power to output circuits (CEC 690.35(C))
11. Any required grounding electrode conductor will be continuous, except for splices or joints at busbars within listed equipment (CEC 250.64C)
12. All PV modules and associated equipment shall be protected from any physical damage
13. All field-installed junction, pull, and outlet boxes

located behind modules shall be accessible directly or by displacement of a module secured by removable fasteners
14. For grounded systems, the inverter is equipped with ground fault protection and a GFI fuse port for ground fault indication
15. When backfed breaker is the method of utility interconnection, the breakers shall not read "Line and Load"
16. The installed solar system has a distributed weight of less than 4 psf
17. The concentrated load for each vertical support is less than 45 lbs
18. AC Disconnect is a "Knife Blade" type disconnect
19. The working clearances around the existing electrical equipment as well as the new electrical equipment will be maintained in accordance with NEC 110.26
20. The photovoltaic inverter will be listed as UL 1741 compliant
21. Work clearances around electrical equipment will be maintained per nec 110.26(a)(1), 110.26(a)(2) & 110.26(a)(3)
22. Smoke alarms and Carbon Monoxide alarms are required to be retrofitted onto the existing dwelling as per the 2016 CRC. These smoke alarms are required to be in all bedrooms, outside each bedroom, and at least one on each floor of the house. Carbon Monoxide alarms are required to be retrofitted outside each bedroom and at least one on each floor of the house. These alarms may be solely battery operated if the photovoltaic project does not involve the removal of interior wall and ceiling finishes inside the home; otherwise, the alarms must be hard wired and interconnected.
23. Smoke and carbon monoxide alarms are required per CRC Sections R314 and 315 to be verified and inspected by the inspector in the field.
24. When applying the 120% rule of CEC 705.12(D)(2), The solar breaker to be positioned at the opposite end of the bus from the main breaker per 705.12(D)(2)
25. Plumbing and mechanical vents through the roof shall not be covered by solar modules - no building, plumbing, or mechanical vents to be covered, obstructed or routed around solar modules
26. Removal of a utility-interactive inverter or other equipment shall not disconnect the building

connection between the grounding electrode conductor and the PV source and/or output circuit grounded conductor
27. The GEC to be protected from physical damage between the grounding electrode and the panel if smaller than a #6 copper wire
28. Where DC conductors are run inside building , they shall be contained in a metal raceway. Conduit shall run along the bottom of load bearing members
29. ALL ELECTRICAL WORK SH DESIGNED PER 2016 CALIFORNIA ELECTRICAL CODE, AND 2014 NATIONAL ELECTRICAL CODE AND 2016 BUILDING ENERGY EFFICIENCY STANDARDS.
30. AND ELECTRICAL EQUIPMENT SHALL LABELED, LISTED, OR CERTIFIED BY A NATIONALLY RECOGNIZED TESTING LABORATORY ACCREDITED OCCUPATIONAL SAFETY HEALTH ADMINISTRATION..
31. Fire Rating shall be Class A when instal with:
Type 1 fire rated modules,
Type 2 fire rated modules,
Type 3 fire rated modules.

THE INSTALLATION SHALL COMPLY WITH
* 2016 CA BUILDING CODE WITH LOCAL JURISDICTION AMENDMENTS
* 2016 CA RESIDNETIOLA CODE
* 2016 CA MECHANICAL CODE
* 2016 CA ELECTRICAL CODE
* 2016 CA GREEN CODE
* 2016 CA PLUMPING CODE
* 2016 CA ENERGY CODE
- 

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PROJECT:

PETER & KIM HERRERA/PARKIER

430 EVANS RD
MILPITAS 95035

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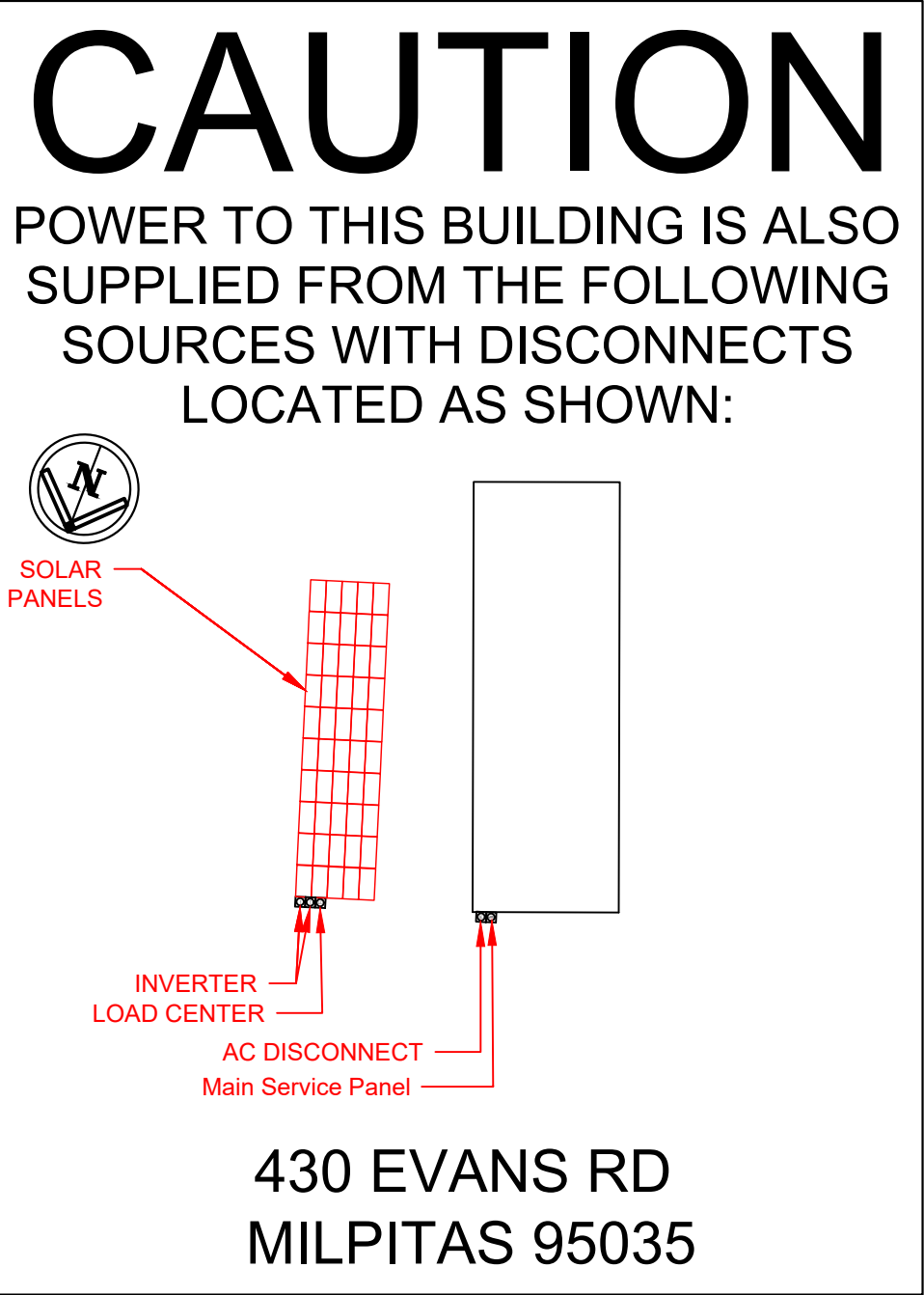
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SHEET NUMBER:

E2

SIGNAGE FORMAT: ALL LETTERS SHALL BE CAPITALIZED, 3/8" WHITE LETTERING ON RED BACKGROUND, ARIAL OR SIMILAR FONT, NON-BOLD; REFLECTIVE, ON WEATHER- RESISTANT MATERIAL SUITABLE FOR THE ENVIRONMENT (USE UL-969 AS STANDARD FOR WEATHER RATING) WILL BE USED; DURABLE ADHESIVE MATERIALS MEET THIS REQUIREMENT.

To be installed adjacent to the main electrical service:





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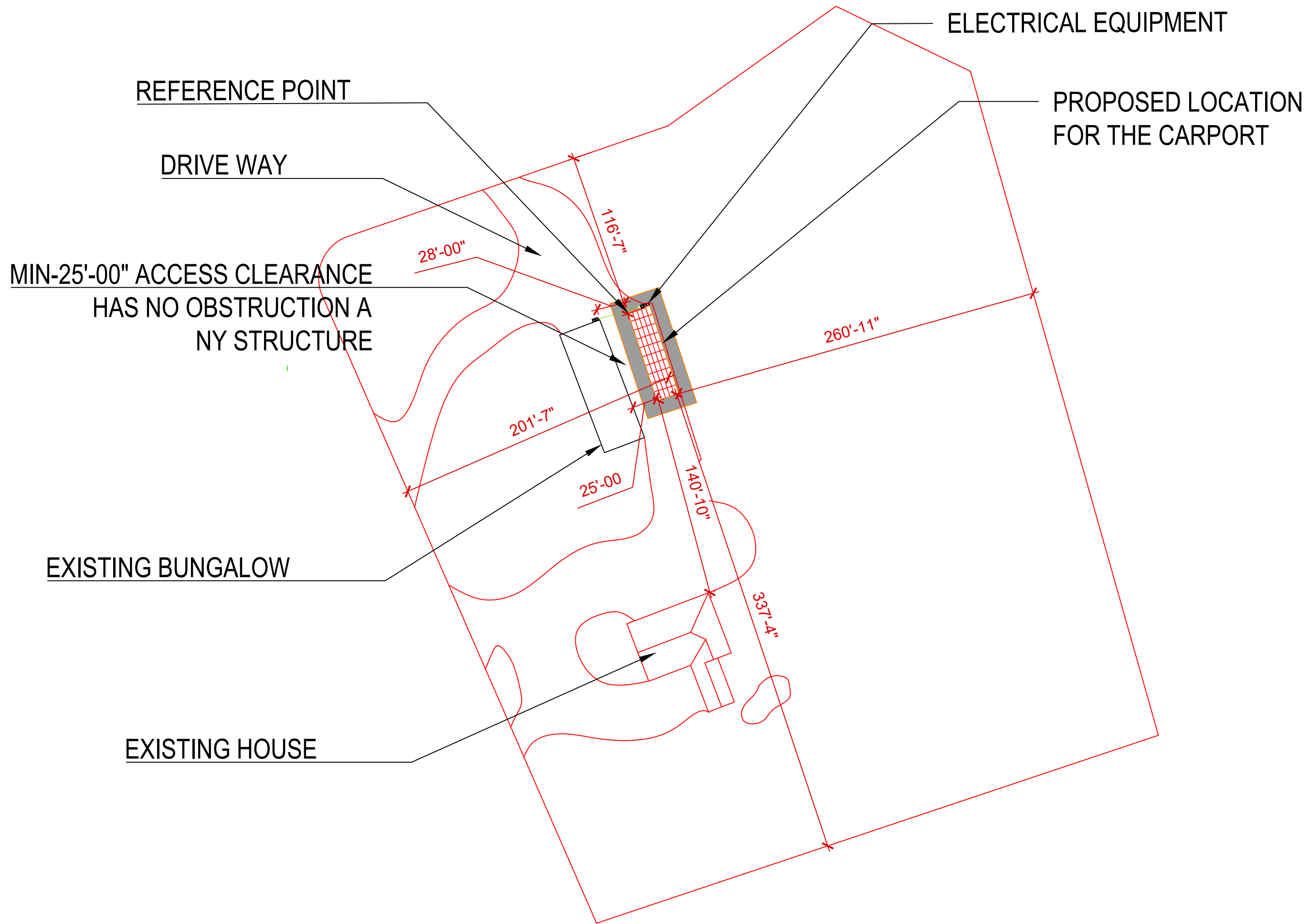
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E3

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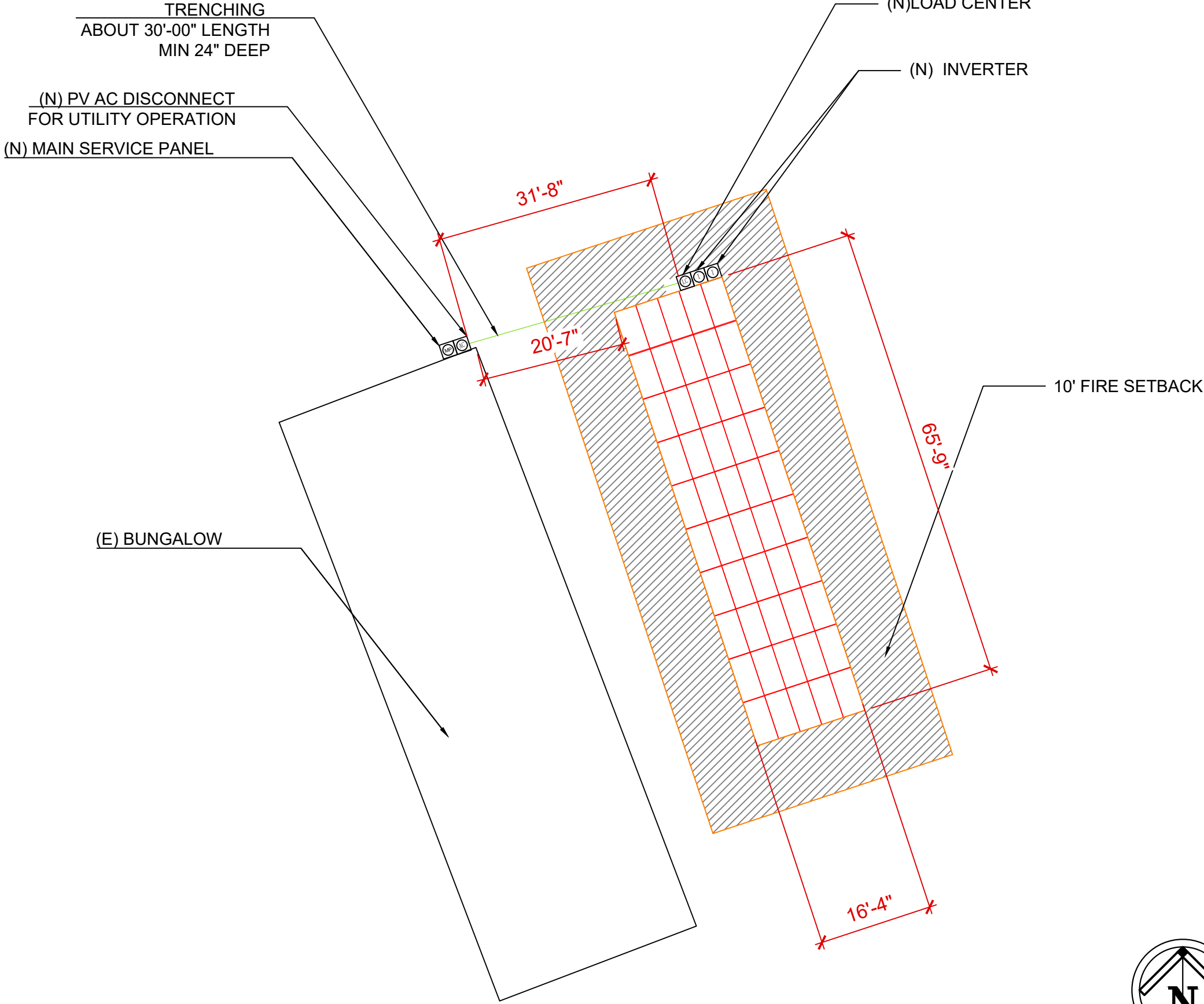
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E4









(50) (N) SOLAREEDGE SW345 MONO XL A **INSTALLED FLUSHED 15° ON CARPORT WITH 252° AZ. (FACING SOUTH WEST)**
1029.65 FT² OVER STEEL CARPORT.no pavement to be added -will use existing pavement

CONDUIT TO BE RUN ON CONDUIT BLOCKS MIN. 1" ABOVE ROOF SURFACE AND UNDER EAVES; CONDUIT TO BE PAINTED TO MATCH EXTERIOR/EXISTING BACKGROUND COLOR OF ITS LOCATION; CONDUIT TO BE LABELED AT MAX 10' INTERVALS.
CONDUIT RUN(S) AND JUNCTION BOX(S) LOCATIONS MAY CHANGE DUE TO FIELD CONDITIONS. CONDUIT TO BE INSTALLED PER CRC R331.3

Handled AC disconnect is required and "must" be located within 8 feet of main service panel.No part of the structure can be over 18" in height from the roof without an Professional Engineer's stamp. No structure may increase the height of the building by 10% of it's original height.



EQUIPMENT LEGEND

DESCRIPTION	
	SERVICE POINT & UTILITY METERING
	AC DISCONNECT W/ WARNING LABEL
	JUNCTION BOX
	INVERTER WITH WARNING LABEL (BUILT-IN DC DISCONNECT)
	LOAD CENTER WITH WARNING LABEL
	INTERIOR CONDUIT RUN
	FENCE
	FIRE ACCESS PATHWAY

SITE PLAN

SCALE: 1/16" = 1'-0"



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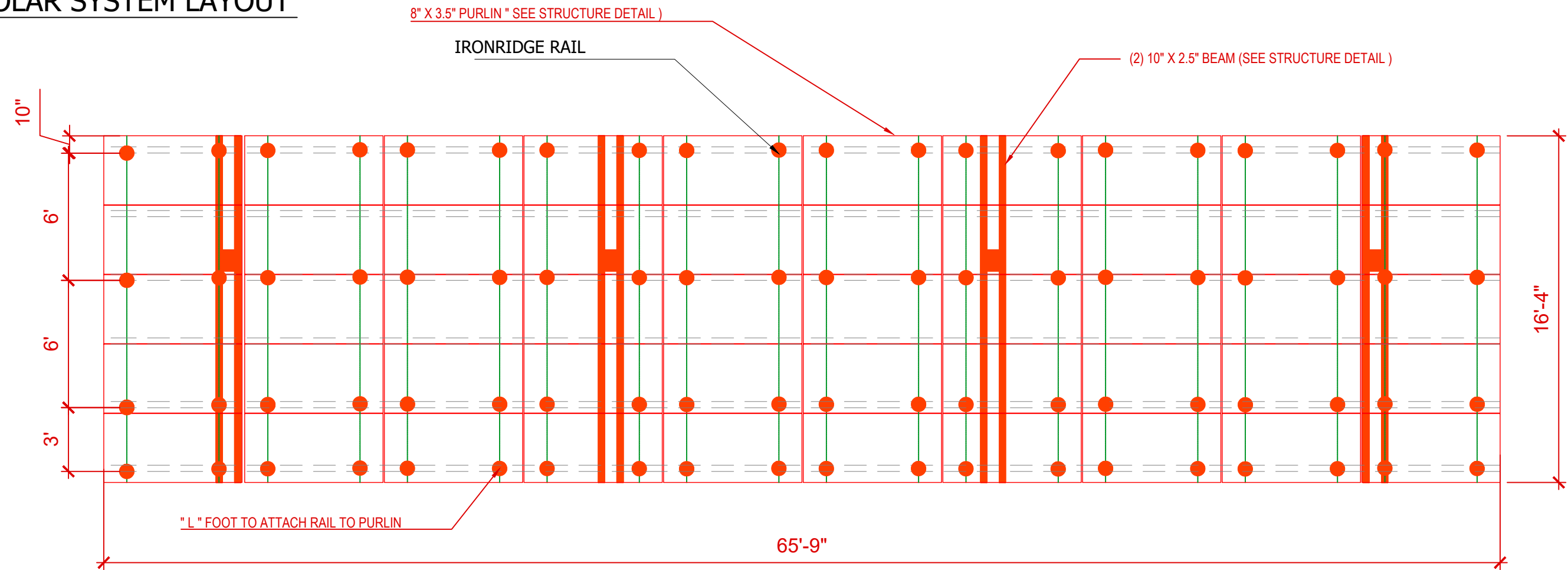
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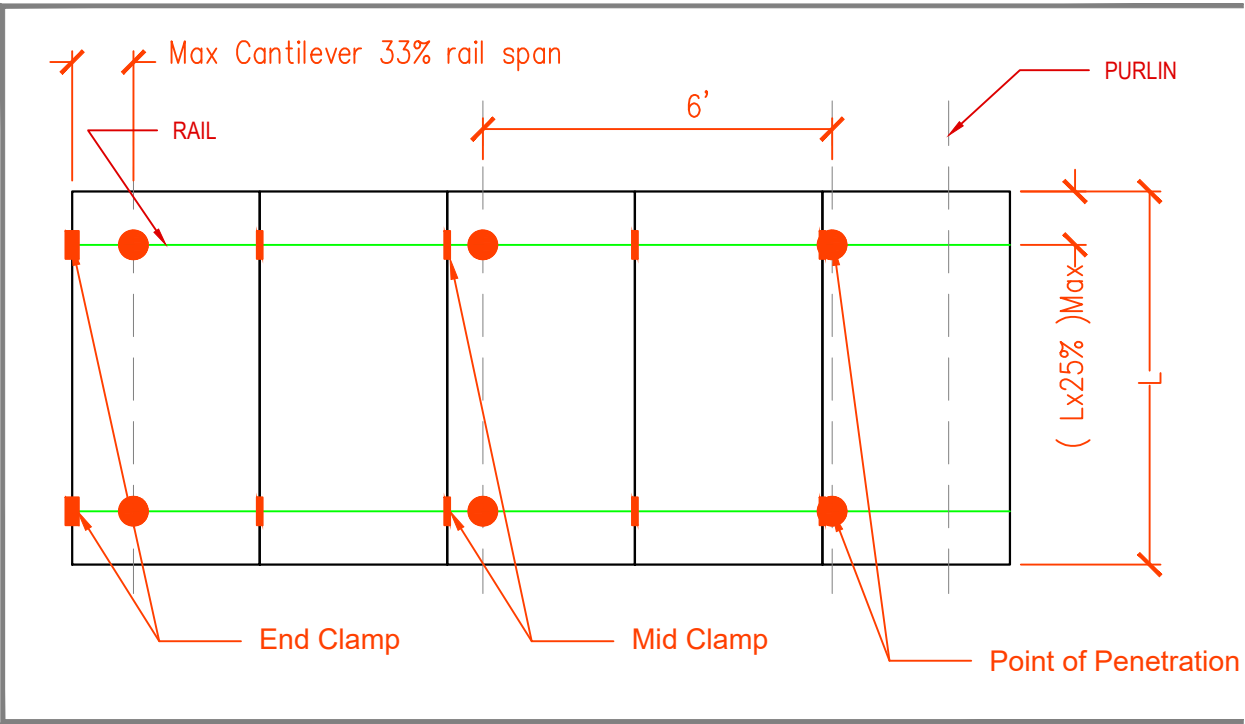
E5

430 EVANS RD
MILPITAS 95035

SOLAR SYSTEM LAYOUT



SOLARWORLD SW 345 MONO XL	
Modules in Array	50
Module Weight - LBS.	47.6
Total Module Weight	2380
Racking	
RACKING lbs./module	6
Total Racking Weight - LBS.	300
Power Optimizers	
Optimizers in Array	50
Optimizer Weight	2.05
Total Optimizer Weight	102.5
Array	
Total Array Weight	2782.5
Module Area	20.593
Total Array Area	1029.65
Lbs. / Sq.Ft.	2.70
Number of Vertical Supports	80
Lbs. per support	34.78



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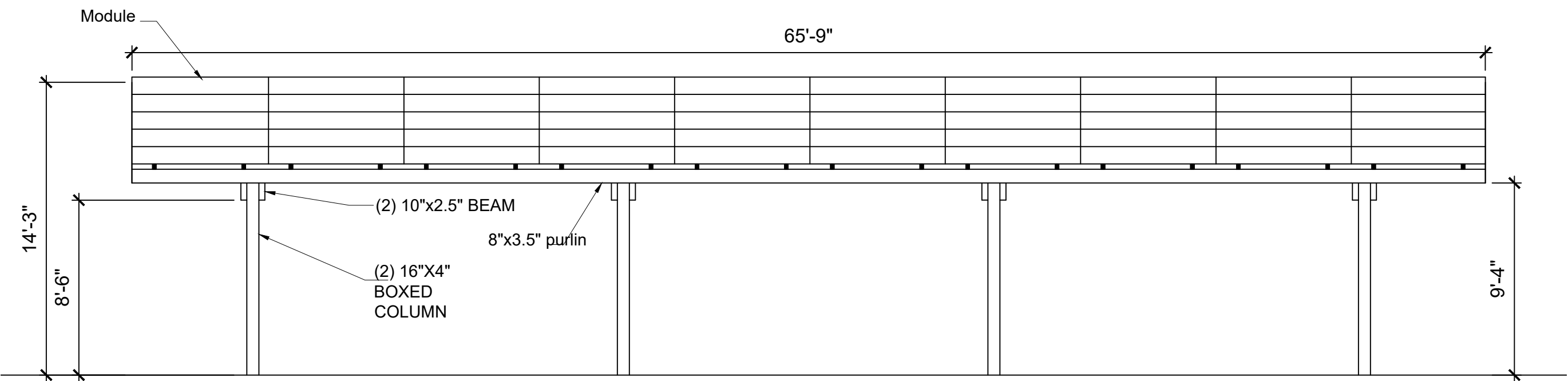
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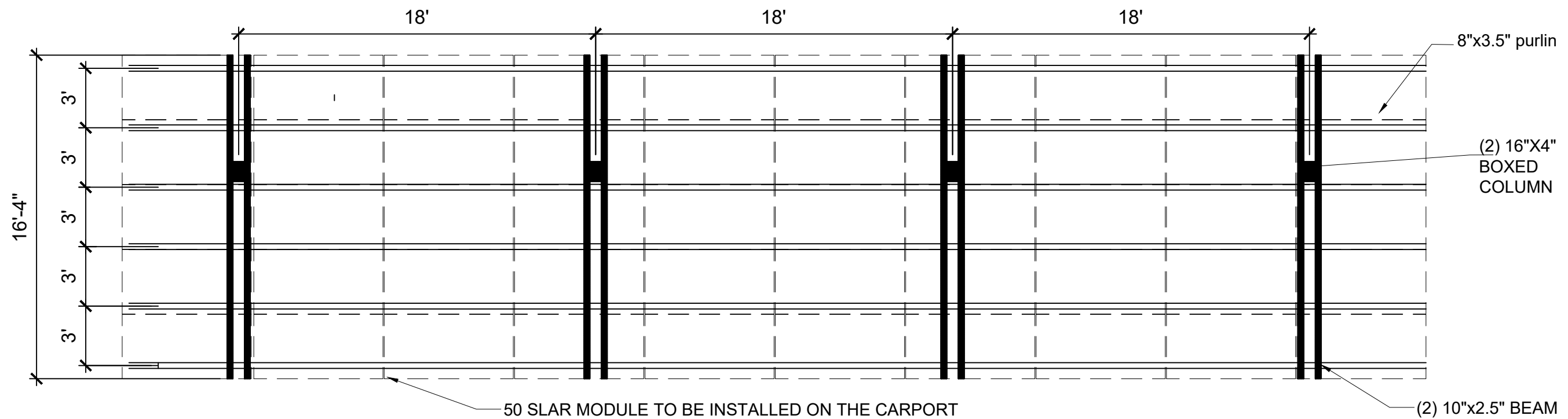
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Front Elevation



CARPORT LAYOUT



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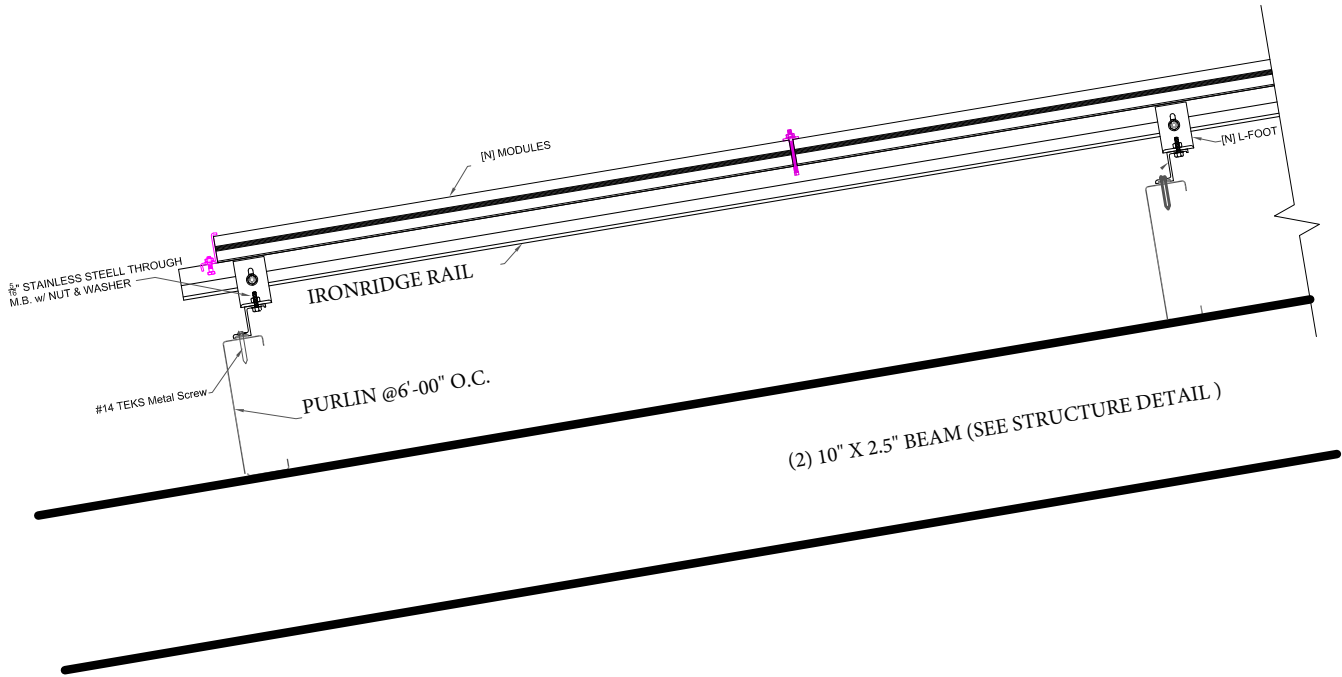
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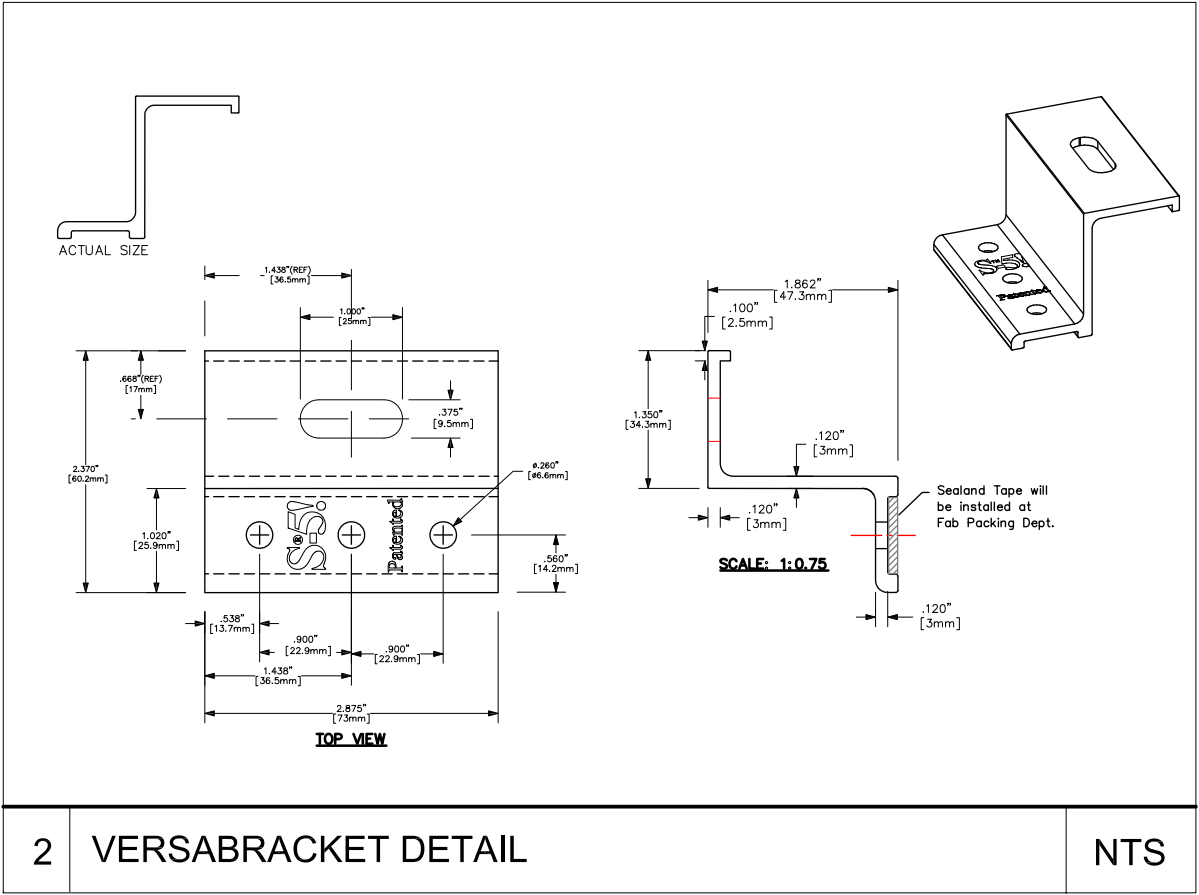
ATTACHMENT DETAIL

color should be earthy gray -and all material should be galvanized



1 ATTACHMENT DETAIL

NTS



2 VERSABRACKET DETAIL

NTS



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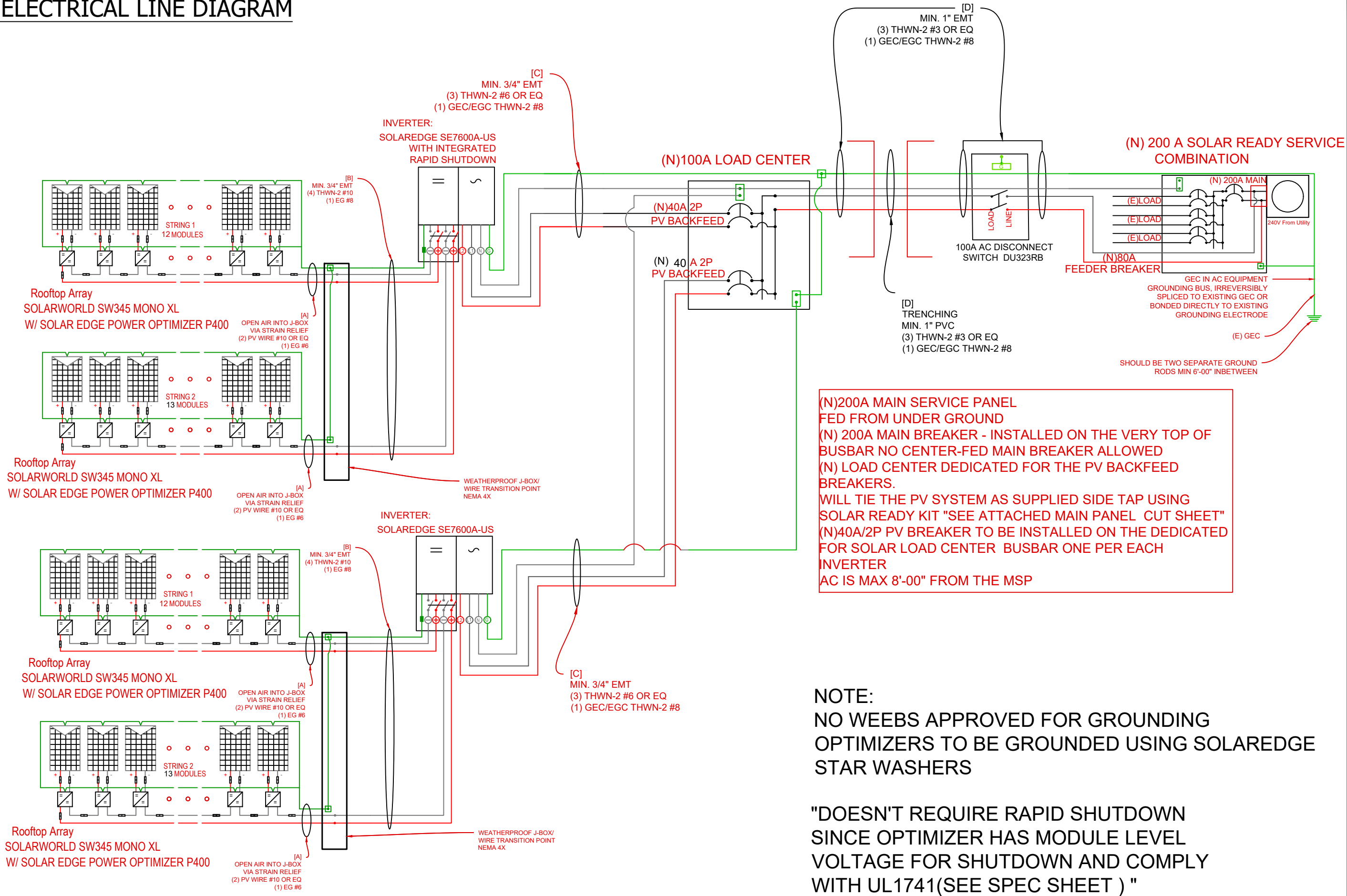
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ELECTRICAL LINE DIAGRAM



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SHEET NUMBER: **E7**

430 EVANS RD
MILPITAS 95035

ELECTRICAL CALCS

Solar Module Electrical Specs	SOLARWORLD SW 345 MONO XL
Maximum Power (Pmax)	345 W
Open-Circuit Voltage (Voc)	47.8 V
Short Circuit Current (Isc)	9.75 A
Max. Power-Point Voltage (Vmp)	38.2 V
Max Power-Point Current (Imp)	9.1 A
Series Fuse Rating	15 A

Inverter Electrical Specs	SOLAREEDGE SE 7600A-US
Maximum Input DC Voltage	500 V
Maximum Input Current	23 A
Nominal DC Input Voltage	350 V
Maximum Output Power	8350 W
Maximum Continuous Output Current	32 A
Maximum Efficiency	98.0 %

Power Optimizer Spec	SOLAREEDGE P400 OPTIMIZER
Rated Input DC Power	400 W
Max Input Voltage	80 V
Max Short Circuit Current	10 A
Max DC Input Current	12.5 A
Max Output Current to Inverter	15 A
Max Ouput Voltage to Inverter	60 V

SEE ATTACHED CUT SHEET FOR MSP FOR MAX ALLOWABLE BACK FEED

Values at DC Disconnect (SOLAREEDGE SE 7600A-US Inverter)		
Max. Power-Point Voltage(Vmp)	optimizer output	350.0 V
Maximum Power-Point Current	(345W x 25) /350V	24.6 A
Maximum Voltage	INVERTER INPUT	500.0 V
Maximum String Current	15 x 1.25	18.8 A
Maximum Array Current	2 X 15 x 1.25	37.5 A

AC Values at Inverter	AT	EACH INVERTER
Nominal Voltage/Operating Range		211-264 V
ED		120/240 V
Maximum Efficiency		98.0 %
Overcurrent Protection (32 x 1.25 = 40)		40 A

Total Number of Modules PER INVERTER	25
Number of Strings at Inverter	2
Number of Modules in Series String #1	12
Number of Modules in Series String #2	13

Wire Size Calculations				
Wire Section (refer to line diagram)	[A]	[B]	[C]	[D]
Min. Ampacity Required (max current x 1.25)	18.8 A	18.8 A	40.0 A	80.0 A
Conduit Type & Size	FREE AIR	3/4" EMT	3/4" EMT	3/4" EMT
Wire Size	10 AWG	10 AWG	6 AWG	3 AWG
Wire Type	PV WIRE	THWN-2	THWN-2	THWN-2
Wire Ampacity at 30° C	40 A	40 A	75 A	130 A
Wire/Conduit Location	Behind Modules >3"	Roof - Exterior >1"	Exterior	Exterior
Ambient Temperature	55 °C	39 °C	39 °C	39 °C
Rooftop Conduit Adder (per CEC 310.15(B)(3)(C))	0 °C	22 °C	22 °C	22 °C
Total temperature to derate:	55 °C	61 °C	61 °C	61 °C
Ambient Temp Correction Factor (per CEC Table 310.15(B)(2)(A))	0.76	0.65	0.65	0.65
Multiple Conductor Adjustment Factor (per CEC Table 310.15(B)(3)(a))	1.0	0.8	1.0	1.0
Wire ampacity after applying correction factors	30.4	20.8	48.75	84.5

NOTES:

1. MODULES ARE BONDED TO RAIL USING UL2703 APPROVED BONDING SYSTEM PLEASE SEE E7.2 FOR DETAILS.
2. IN EXISTING ELECTRICAL SYSTEMS THAT USE ONLY ONE GROUNDING (NOT UFER) ELECTRODE ROD, AN ADDITIONAL GROUNDING ELECTRODE (I.E. DRIVEN ROD) SHALL BE PROVIDED PER (NEC 250.50) .GROUNDING ELECTRODE SYSTEM INSTALLATION PER 250.53(B)IF DRIVEN ROD. IF COLD WATER BONDING IS AVAILABLE WITHIN 5' FEET FROM POINT OF ENTRANCE TO THE BUILDING, THEN COLD WATER BONDING SHALL BE PERMITTED TO BE USED AS A CONDUCTOR TO INTERCONNECT ELECTRODES THAT ARE PART OF THE GROUNDING ELECTRODE SYSTEM. 250.68 (C)(1)
3. PV DC SYSTEM IS UNGROUNDED
4. BACKFED PV BREAKER WILL BE INSTALLED AT OPPOSITE END OF THE BUS BAR FROM THE MAIN BREAKER. A PERMANENT WARNING LABEL TO BE INSTALLED PER SYSTEM SIGNAGE, SHEET E3
5. BARE COPPER IS TRANSITIONED TO THWN-2 VIA IRREVERSIBLE CRIMP; THE GEC TO BE CONTINUOUS AS PER CEC 250.64(C)
6. PHOTOVOLTAIC SYSTEM CONDUCTORS SHALL BE IDENTIFIED AND GROUPED. THE MEANS OF IDENTIFICATION SHALL BE PERMITTED BY SEPARATE COLOR-CODING, MARKING TAPE, TAGGING OR OTHER APPROVED MEANS
7. UL2703 LAY IN LUG MODEL# ILSCO GBL-4DBT

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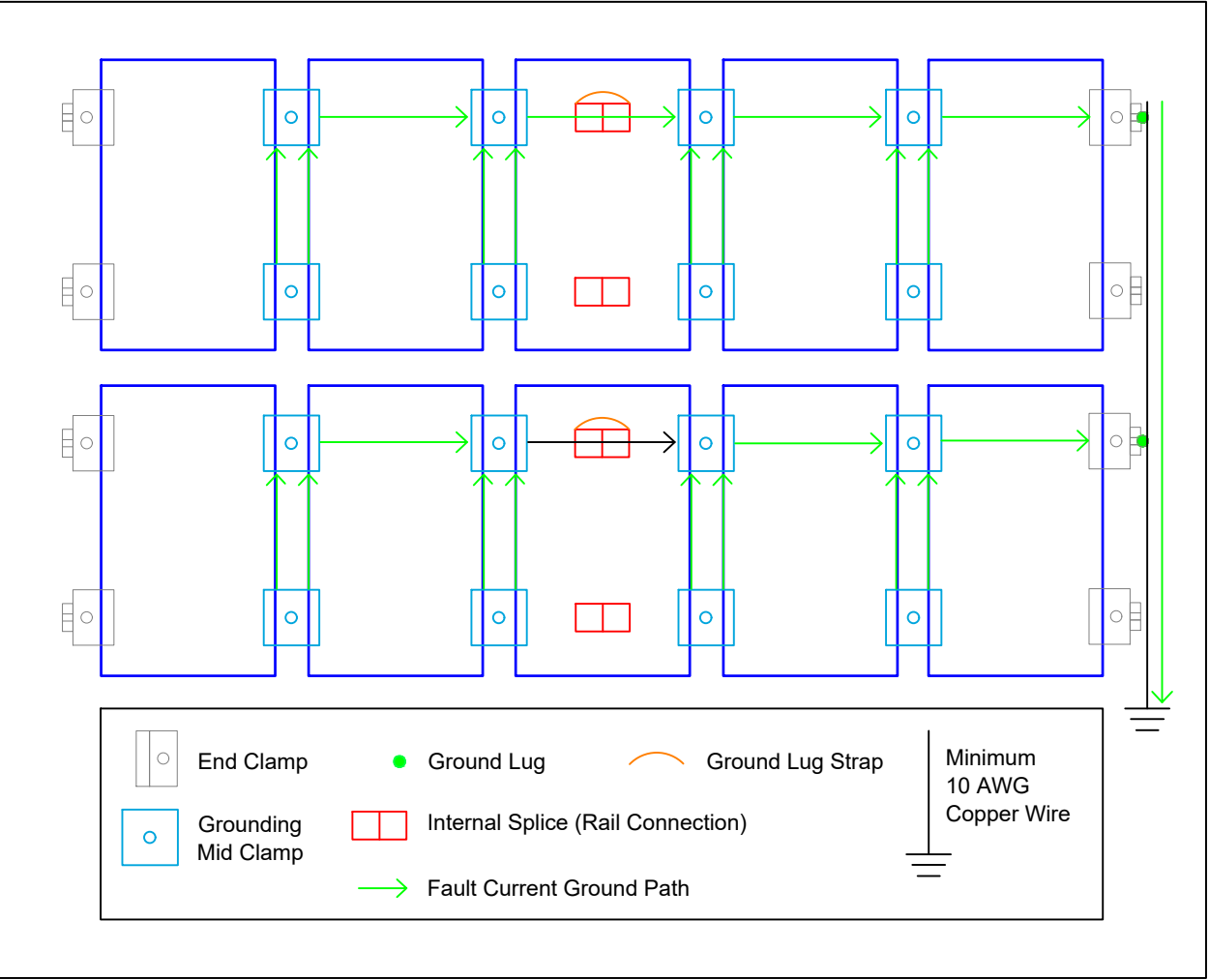
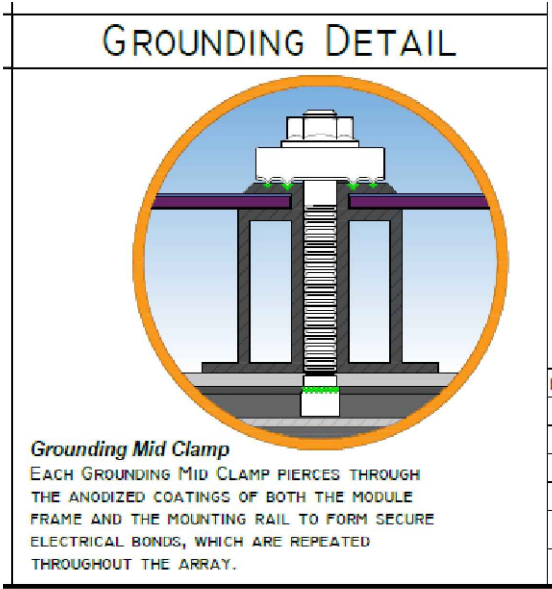
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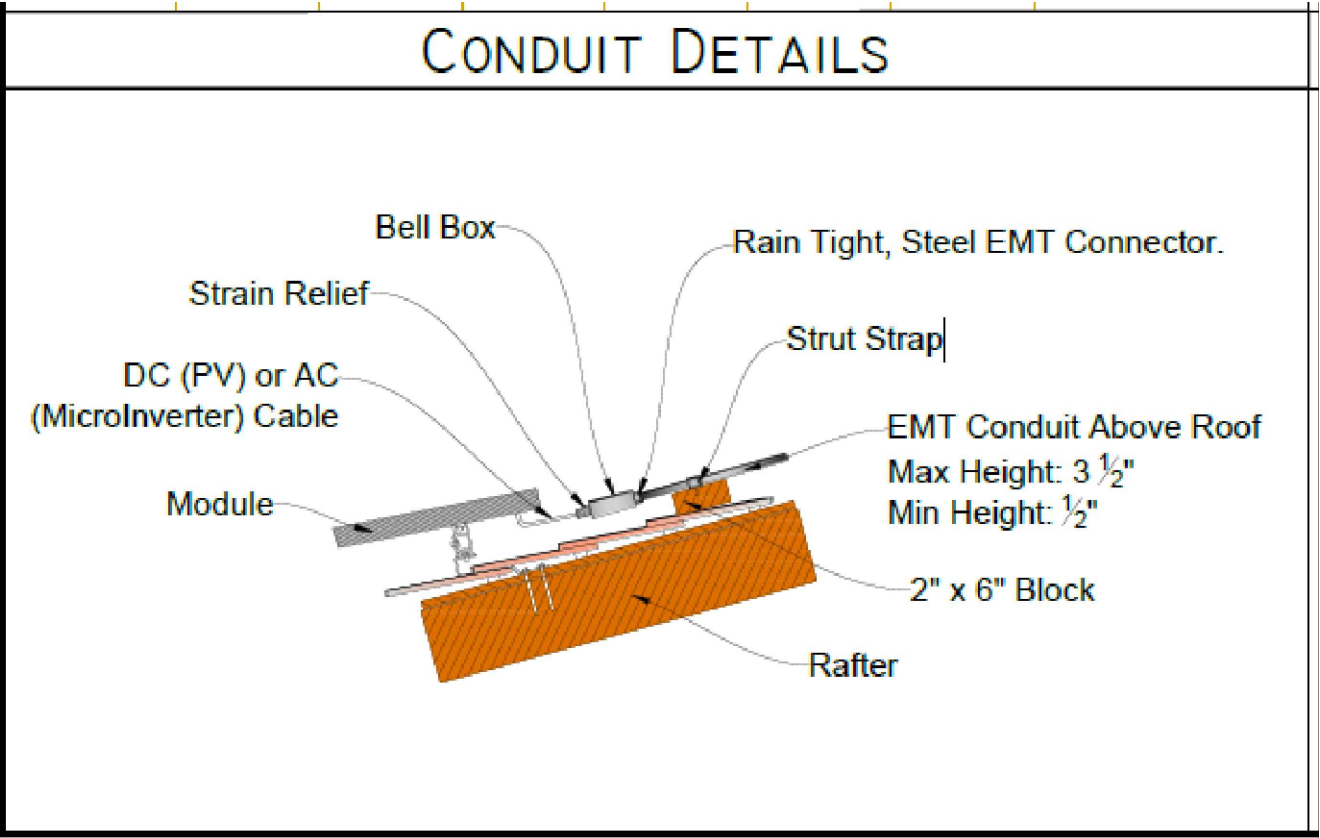
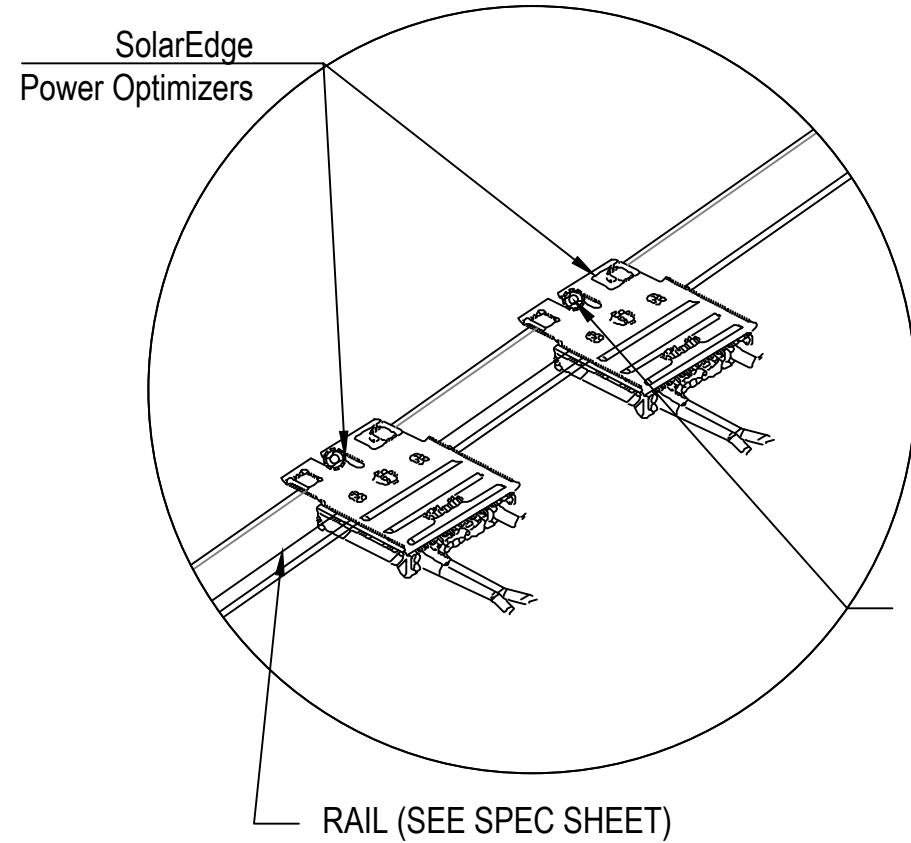
GROUNDING DETAIL



Figure 1: Star washer



POWER OPTIMIZER GROUNDING DETAIL



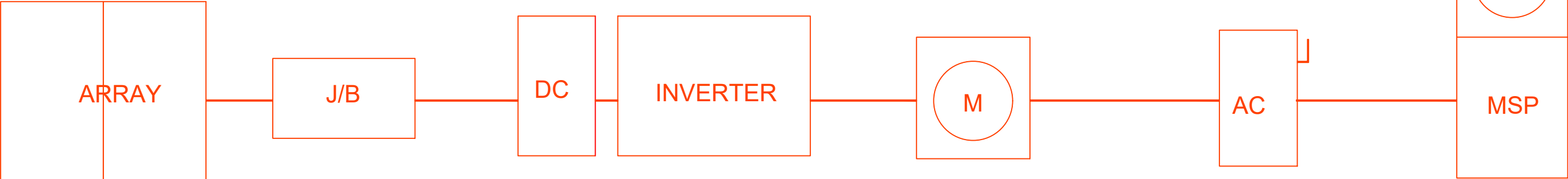
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E7.2



EMT CONDUIT RACEWAYS

JUNCTION BOX

DC DISCONNECT

PRODUCTION METER

AC DISCONNECT

MAIN SERVICE PANEL

WARNING

PHOTOVOLTAIC POWER SOURCE

5 3/4" X 1 1/8"

DC JUNCTION BOX

4" X 3/4"

WARNING

PHOTOVOLTAIC POWER SOURCE

5 3/4" X 1 1/8"

PHOTOVOLTAIC SYSTEM

DC DISCONNECT

OPERATING VOLTAGE	350	VDC
OPERATING CURRENT	24.6	AMPS
MAX SYSTEM VOLTAGE	500	VDC
SHORT CIRCUIT CURRENT	37.5	AMPS
CHARGE CONTROLLER MAX	N/A	AMPS

4" x 3"

WARNING

ELECTRIC SHOCK HAZARD

IF GROUND FAULT IS INDICATED
ALL NORMALLY GROUNDED
CONDUCTORS MAY BE
UNGROUND AND ENERGIZED

4" x 3"

PHOTOVOLTAIC SYSTEM

kWh METER

4" x 1"

PHOTOVOLTAIC SYSTEM

AC DISCONNECT

OPERATING VOLTAGE	240	VOLTS
OPERATING CURRENT	32.0	AMPS

4" x 2"

CAUTION: SOLAR ELECTRIC
SYSTEM CONNECTED

5 3/4" X 1 1/8"

PV SOLAR BREAKER

DO NOT RELOCATE
THIS OVERCURRENT
DEVICE

2" X 1"

WARNING!

ELECTRIC SHOCK HAZARD.
DO NOT TOUCH TERMINALS.
TERMINALS ON BOTH THE LINE
AND
LOAD SIDES MAY BE ENERGIZED
IN THE
OPEN POSITION.

WARNING

ELECTRIC SHOCK HAZARD

DO NOT TOUCH TERMINALS
TERMINALS ON BOTH THE LINE AND
LOAD SIDES MAY BE ENERGIZED
IN THE OPEN POSITION
PHOTOVOLTAIC MODULES PRODUCE DC VOLTAGE
WHENEVER THEY ARE EXPOSED TO SUNLIGHT

4" x 3"

WARNING

DUAL POWER SUPPLY

SOURCES: UTILITY GRID AND
PV SOLAR ELECTRIC SYSTEM

4" x 2"

PHOTOVOLTAIC SYSTEM
EQUIPPED WITH
RAPID SHUTDOWN

NEC 690.56 (C)
3/8" TALL LETTERS, BE
REFLECTIVE WITH WHITE TEXT
ON A RED BACKGROUND

- FORMAT:
- (1) WHITE LETTERING ON A RED BACKGROUND.
 - (2) MINIMUM 3/8 INCHES LETTER HEIGHT.
 - (3) ALL LETTERS SHALL BE CAPITALIZED
 - (4) ARIAL OR SIMILAR FONT, NON-BOLD.

MATERIAL:

REFLECTIVE, WEATHER RESISTANT MATERIAL SUITABLE FOR THE ENVIRONMENT (USE UL-969 AS STANDARD FOR WEATHER RATING). DURABLE ADHESIVE MATERIALS

NOTE: THE PLAQUE SHALL BE METAL OR PLASTIC, WITH ENGRAVED OR MACHINE PRINTED LETTERS IN A CONTRASTING COLOR TO THE PLAQUE, INCLUDE THE LOCATION OF METER, DISCONNECTS, INVERTER, THE ARRAY AND A FOOTPRINT OF THE ENTIRE BUILDING AND SITE. THE PLAQUE WILL BE ATTACHED BY POP-RIVETS, SCREWS OR OTHER APPROVED FASTENERS.

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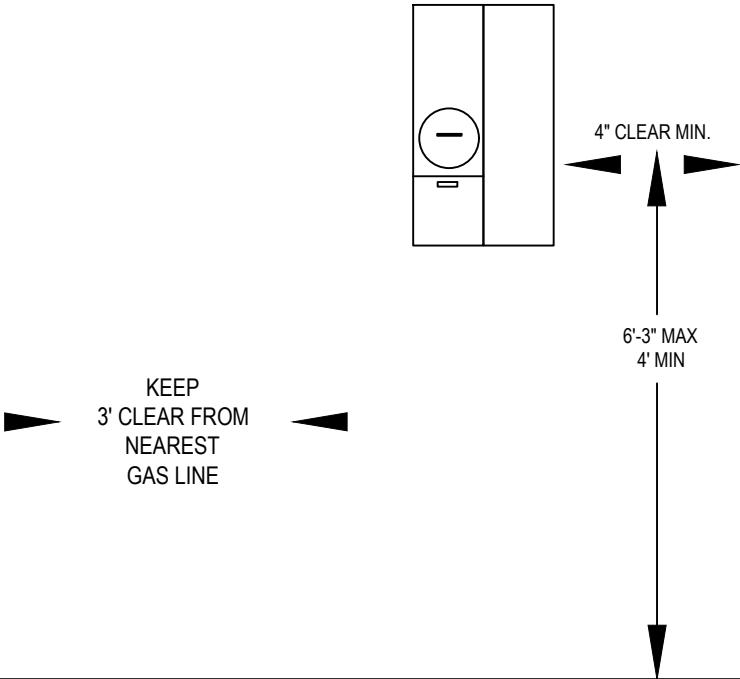
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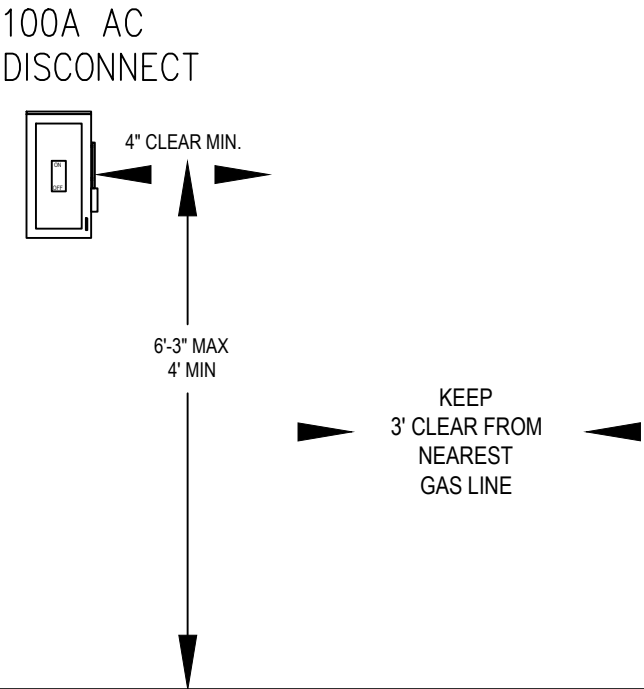
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EQUIPMENT PLACEMENT ON WALL

KEEP 7" CLEAR OF ANY OBSTRUCTION ABOVE METER



KEEP 7" CLEAR OF ANY OBSTRUCTION ABOVE METER



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SHEET NUMBER:
E7.4

TRENCHING DETAIL

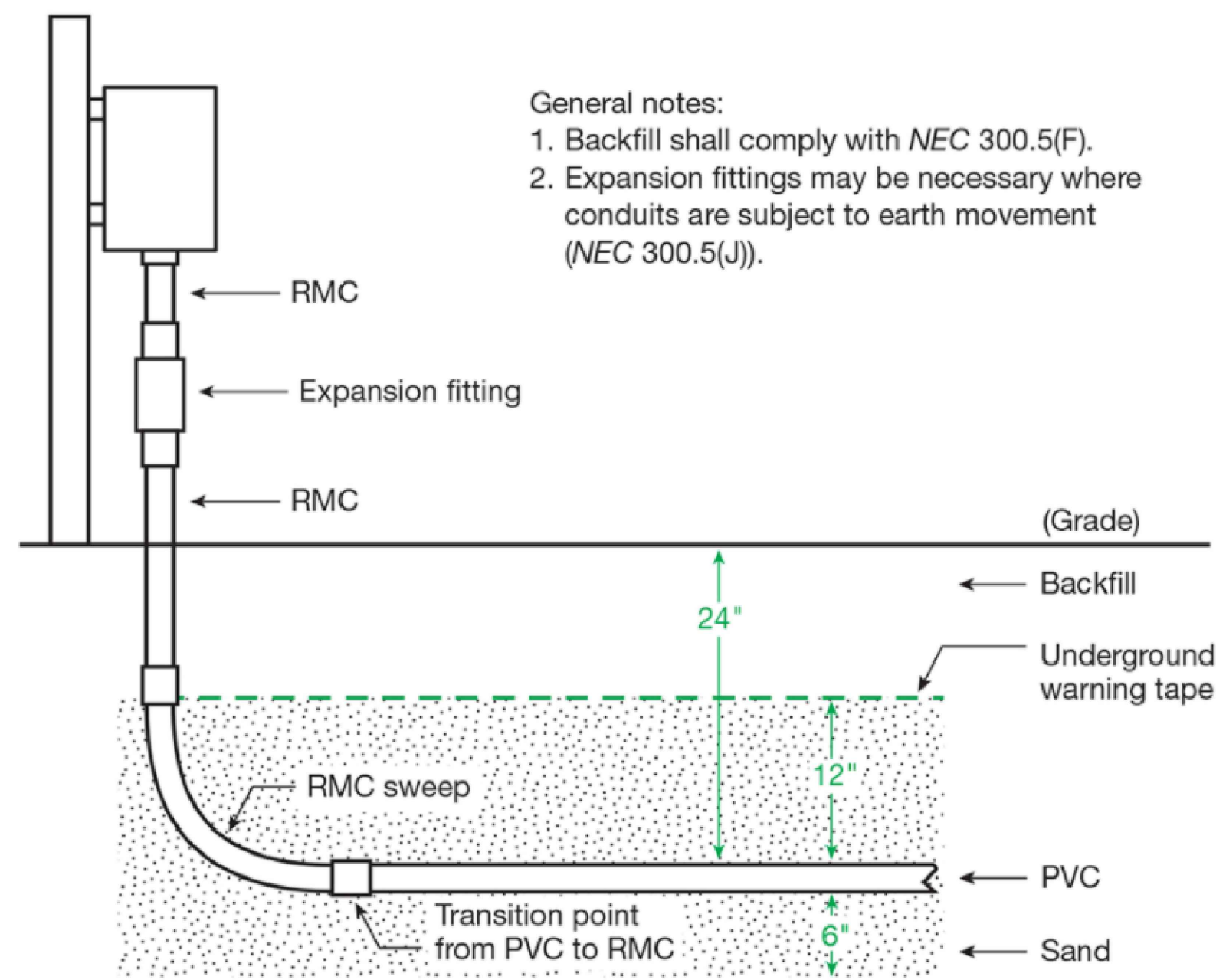


Diagram 3 For a well-protected underground raceway system, it is best practice to encase underground raceways in sand, specify RMC for vertical sweeps and include an underground warning tape 12 inches above the raceway. Where conduits are installed in earth that may move due to frost or settling, expansion fittings may provide the protection that *NEC 300.5(J)* requires.



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E7.5

Voltage Drop

Voltage Drop Calculations

1240Select voltage

23%Select the max desired voltage drop (0%-5%)

3Single PhaseSelect phase type

4Stranded Copper UncoatedSelect the type of wire

5AWG 4Select the size of wire if known

630Enter the length of wire (0-5000') if known

764Enter Amps (0-6000) if known

81Select the number of parallel wires (1 is non-parallel) or 2-25 pairs

Printable View

No

Note: If only one of cells 5,6 and 7 is left blank, then a calculated value will appear to the left of the cell.

If the wire is smaller than AWG 1/0 then parallel wires are not allowed except per 310.4 exceptions.

97.2Maximum voltage drop allowed

10232.80Minimum voltage allowed at load

112Multiplier

120.308Resistance/1000' of wire

13AWG 4Wire Size

1430.00Distance

1564Maximum Amps

161Minimum number of parallel wires

71.18 volts (ok)Actual voltage drop

18238.82 volts (ok)Actual voltage with load

196.02 volts (ok)Voltage difference

200.0003080 ohmsTotal resistance per foot

21AWG 10 recommendedMinimum wire size for voltage drop

22183 feetMaximum distance with this load

2370 amps@60°FMax ampacity of the wire in Cell 13 per Table 310.16 of the 2011 NEC

246.00 amps (ok)Ampacity above or below load

Enter data into these cells

Calculated information

Good data

Bad data

The following voltage drop calculations were all based on the resistance values in Table 8 of Chapter 9 of the 2011 NEC. This spreadsheet only considers voltage drop. Many other factors affect wire size. Refer to the entire NEC when sizing wire.

Yossi Tamir
Yossi Tamir LIC#781353-B

NRG Clean Power
7012 Owensmouth Ave.
Canoga Park, CA 91303
Office: 800-698-6627
Fax: 818-475-0118
www.nrgcleanpower.com

PROJECT: PETER & KIM HERRERA/PARKIER
430 EVANS RD
MILPITAS 95035

DRAWN BY: _____
DATE: 12/20/16

SHEET NUMBER:
E7.6

S-5!® The Right Way!

VersaBracket™

VersaBracket™ can be used to mount almost anything to an exposed-fastened roof system and is compatible with almost any trapezoidal exposed-fastened profile. No messy sealants to apply! No chance for leaks! The VersaBracket comes with factory-applied butyl sealant already in the base, and the S-5!® patented reservoir conceals the sealant from UV exposure, preventing drying and cracks.

Installation is simple! VersaBracket is mounted in the flat of the panel, directly into the supporting structure of the roof, i.e. wood decking, wood or steel purlins or trusses. No surface preparation is necessary; simply wipe away excess oil and debris, peel the release paper from the base, align, and apply. Secure through the pre-punched holes using the appropriate screws for the supporting structure.

VersaBracket is so strong, it will even support heavy-duty applications like snow retention. For exposed-fastened trapezoidal profiles, the VersaBracket is the perfect match for our ColorGard® snow retention systems (for corrugated roofs use CorruBracket™). VersaBracket is extremely economical and facilitates quick and easy installation.

S-5!® VersaBracket™ is the right way to attach almost anything to exposed-fastened roof profiles, including PV through rail methods.



VersaBracket™

888-825-3432 | www.S-5.com

S-5!® The Right Way!

VersaBracket™ can be used for almost any attachment need, including S-5!® ColorGard®, on all types of exposed-fastened metal roofing. No messy sealants to apply. The factory-applied butyl sealant waterproofs and makes installation a snap!

To accommodate various rib heights, VersaBracket™ comes in two heights—the 2.65" VersaBracket-67™ and the 1.86" VersaBracket-47™. The VersaBracket-67 mounting face has no holes or slots; thus, ancillary items are typically secured using self-tapping screws. The VersaBracket-47 comes with a 1" slot on top as the standard part. Other hole and slot configurations available with minimum purchase requirements (contact your distributor for available configurations). Each VersaBracket comes with factory-applied butyl sealant in the base. A structural aluminum attachment bracket, VersaBracket is compatible with most common metal roofing materials. For design assistance, ask your distributor, or use our web-based calculator at www.S-5.com for job-specific system engineering and design of your next snow retention project. Also, please visit our website for more information including CAD details, metallurgical compatibilities, and specifications.

The VersaBracket has been tested for load-to-failure results on wood decking, metal, and wood purlins. The independent lab test data found at www.S-5.com can be used for load-critical designs and applications. S-5!® holding strength is unmatched in the industry.

Example Profile

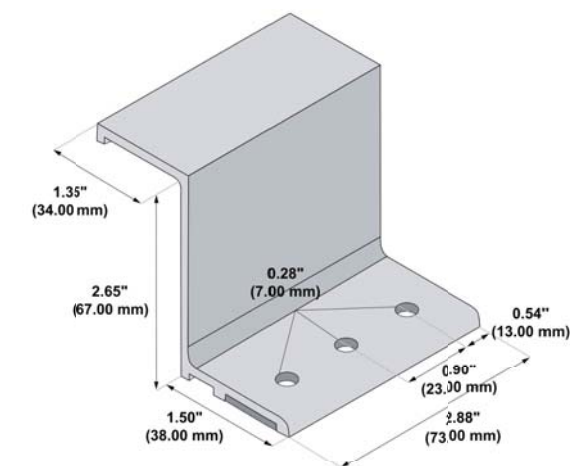


Example Applications

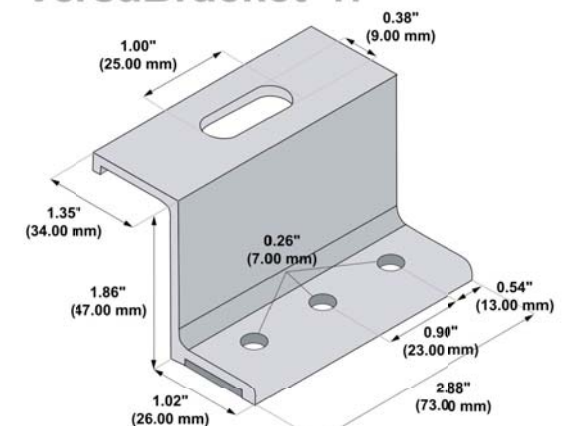
ColorGard



VersaBracket-67™



VersaBracket-47™



3 holes are provided for versatility. Some installations require only 2 fasteners. See the load table on the S-5! website and the installation instructions for more details.

Due to varied applications, mounting hardware is not furnished with part.

Please note: All measurements are rounded to the second decimal place.

S-5!® Warning! Please use this product responsibly!

Products are protected by multiple U.S. and foreign patents. For published data regarding holding strength, bolt torque, patents and trademarks visit the S-5! website at www.S-5.com.

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Distributed by

Sunmodule®

SW 340-350 XL MONO



TUV Power controlled:
Lowest measuring tolerance in industry



Every component is tested to meet
3 times IEC requirements



Designed to withstand heavy
accumulations of snow and ice



Available with either 1000 V or 1500 V
maximum voltage rating



25-year linear performance warranty
and 10-year product warranty



Glass with anti-reflective coating



World-class quality

Fully-automated production lines and seamless monitoring of the process and material ensure the quality that the company sets as its benchmark for its sites worldwide.

SolarWorld Plus-Sorting

Plus-Sorting guarantees highest system efficiency. SolarWorld only delivers modules that have greater than or equal to the nameplate rated power.

25-year linear performance guarantee and extension of product warranty to 10 years

SolarWorld guarantees a maximum performance digression of 0.7% p.a. in the course of 25 years, a significant added value compared to the two-phase warranties common in the industry, along with our industry-first 10-year product warranty.*

*in accordance with the applicable SolarWorld Limited Warranty at purchase.
www.solarworld.com/warranty



- Qualified, IEC 61215
- Safety tested, IEC 61730
- Blowing sand resistance, IEC 60068-2-68
- Ammonia resistance, IEC 62716
- Salt mist corrosion, IEC 61701
- Periodic inspection



- Periodic inspection
- Power controlled



Sunmodule®

SW 340-350 XL MONO



PERFORMANCE UNDER STANDARD TEST CONDITIONS (STC)*

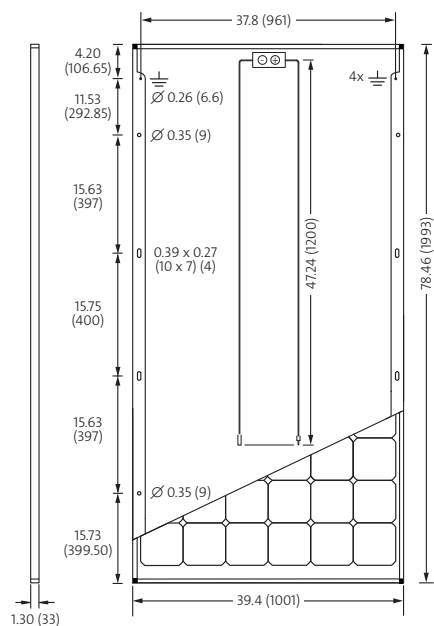
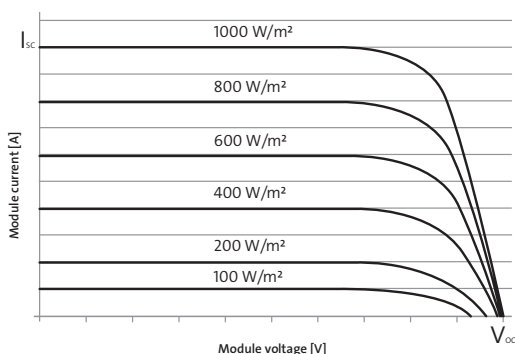
		SW 340	SW 345	SW 350
Maximum power	P_{max}	340 Wp	345 Wp	350 Wp
Open circuit voltage	V_{oc}	47.6 V	47.8 V	48.0 V
Maximum power point voltage	V_{mpp}	38.0 V	38.2 V	38.4 V
Short circuit current	I_{sc}	9.69 A	9.75 A	9.82 A
Maximum power point current	I_{mpp}	9.01 A	9.10 A	9.17 A
Module efficiency	η_m	17.04 %	17.29 %	17.54 %

*STC: 1000W/m², 25°C, AM 1.5

PERFORMANCE AT 800 W/M², NOCT, AM 1.5

		SW 340	SW 345	SW 350
Maximum power	P_{max}	259.3 Wp	263.8 Wp	267.2 Wp
Open circuit voltage	V_{oc}	41.5 V	41.8 V	42.0 V
Maximum power point voltage	V_{mpp}	34.9 V	35.2 V	35.4 V
Short circuit current	I_{sc}	8.05 A	8.10 A	8.16 A
Maximum power point current	I_{mpp}	7.42 A	7.50 A	7.56 A

Minor reduction in efficiency under partial load conditions at 25° C: at 200 W/m², 100% of the STC efficiency (1000 W/m²) is achieved.



COMPONENT MATERIALS

Cells per module	72	Front	Low-iron tempered glass with ARC (EN 12150)
Cell type	Monocrystalline	Frame	Clear anodized aluminum
Cell dimensions	6.17 in x 6.17 in (156.75 x 156.75 mm)	Weight	47.6 lbs (21.6 kg)

THERMAL CHARACTERISTICS

NOCT	46 °C
TCI_{sc}	0.042 % / °C
TCV_{oc}	-0.304 % / °C
TCp_{mpp}	-0.43 % / °C
Operating temp	-40 to +85 °C

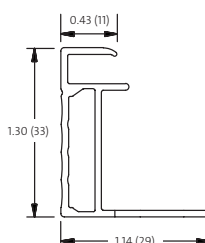
ADDITIONAL DATA

Power sorting	-0 Wp/+5 Wp
J-Box	IP65
Connector	PV wire per UL4703 with H4/UTX connectors
Module fire performance	(UL 1703) Type 1

PARAMETERS FOR OPTIMAL SYSTEM INTEGRATION

Maximum system voltage NEC	1000 V or 1500 V - Specify when ordering
Maximum system voltage SC II	1000 V
Maximum reverse current	25 A
Number of bypass diodes	3
Design loads*	Two rail system 113 psf downward, 64 psf upward
Design loads*	Edge mounting 178 psf downward, 23 psf upward

* Please refer to the Sunmodule installation instructions for the details associated with these load cases.



- Compatible with both "Top-Down" and "Bottom" mounting methods
- ⚡ Grounding Locations:
 - 4 locations along the length of the module in the extended flange.

All units provided are imperial. SI units provided in parentheses.
SolarWorld AG reserves the right to make specification changes without notice.

SW-01-7540US-I 1500V 160419



SolarEdge Single Phase Inverters

For North America

SE3000A-US / SE3800A-US / SE5000A-US / SE6000A-US /
SE7600A-US / SE10000A-US / SE11400A-US



INVERTERS

The best choice for SolarEdge enabled systems

- Integrated arc fault protection for NEC 2011 690.11 compliance
- Rapid shutdown for NEC 2014 690.12
- Superior efficiency (98%)
- Small, lightweight and easy to install on provided bracket
- Built-in module-level monitoring
- Internet connection through Ethernet or Wireless
- Outdoor and indoor installation
- Fixed voltage inverter, DC/AC conversion only
- Pre-assembled Safety Switch for faster installation
- Optional – revenue grade data, ANSI C12.20



Single Phase Inverters for North America

SE3000A-US / SE3800A-US / SE5000A-US / SE6000A-US /
SE7600A-US / SE10000A-US / SE11400A-US

	SE3000A-US	SE3800A-US	SE5000A-US	SE6000A-US	SE7600A-US	SE10000A-US	SE11400A-US	
OUTPUT								
Nominal AC Power Output	3000	3800	5000	6000	7600	9980 @ 208V 10000 @240V	11400	VA
Max. AC Power Output	3300	4150	5400 @ 208V 5450 @240V	6000	8350	10800 @ 208V 10950 @240V	12000	VA
AC Output Voltage Min.-Nom.-Max. ⁽¹⁾ 183 - 208 - 229 Vac	-	-	✓	-	-	✓	-	
AC Output Voltage Min.-Nom.-Max. ⁽¹⁾ 211 - 240 - 264 Vac	✓	✓	✓	✓	✓	✓	✓	
AC Frequency Min.-Nom.-Max. ⁽¹⁾	59.3 - 60 - 60.5							Hz
Max. Continuous Output Current	12.5	16	24 @ 208V 21 @ 240V	25	32	48 @ 208V 42 @ 240V	47.5	A
GFDI Threshold	1							A
Utility Monitoring, Islanding Protection, Country Configurable Thresholds				Yes				Yes
INPUT								
Maximum DC Power (STC)	4050	5100	6750	8100	10250	13500	15350	W
Transformer-less, Ungrounded	Yes							
Max. Input Voltage	500							Vdc
Nom. DC Input Voltage	325 @ 208V / 350 @ 240V							Vdc
Max. Input Current ⁽²⁾	9.5	13	16.5 @ 208V 15.5 @ 240V	18	23	33 @ 208V 30.5 @ 240V	34.5	Adc
Max. Input Short Circuit Current	45							Adc
Reverse-Polarity Protection	Yes							
Ground-Fault Isolation Detection	600k Ω Sensitivity							
Maximum Inverter Efficiency	97.7	98.2	98.3	98.3	98	98	98	%
CEC Weighted Efficiency	97.5	98	97 @ 208V 98 @ 240V	97.5	97.5	97 @ 208V 97.5 @ 240V	97.5	%
Nighttime Power Consumption	< 2.5					< 4		W
ADDITIONAL FEATURES								
Supported Communication Interfaces	RS485, RS232, Ethernet, ZigBee (optional)							
Revenue Grade Data, ANSI C12.20	Optional ⁽³⁾							
Rapid Shutdown – NEC 2014 690.12	Yes							
STANDARD COMPLIANCE								
Safety	UL1741, UL1741 SA, UL1699B, UL1998 , CSA 22.2							
Grid Connection Standards	IEEE1547							
Emissions	FCC part15 class B							
INSTALLATION SPECIFICATIONS								
AC output conduit size / AWG range	3/4" minimum / 16-6 AWG					3/4" minimum / 8-3 AWG		
DC input conduit size / # of strings / AWG range	3/4" minimum / 1-2 strings / 16-6 AWG					3/4" minimum / 1-3 strings / 14-6 AWG		
Dimensions with Safety Switch (HxWxD)	30.5 x 12.5 x 7.2 / 775 x 315 x 184					30.5 x 12.5 x 10.5 / 775 x 315 x 260		in / mm
Weight with Safety Switch	51.2 / 23.2		54.7 / 24.7			88.4 / 40.1		lb / kg
Cooling	Natural Convection				Natural convection and internal fan (user replaceable)	Fans (user replaceable)		
Noise	< 25				< 50			dBA
Min.-Max. Operating Temperature Range	-13 to +140 / -25 to +60 (-40 to +60 version available ⁽⁴⁾)							°F / °C
Protection Rating	NEMA 3R							

⁽¹⁾ For other regional settings please contact SolarEdge support.

⁽²⁾ A higher current source may be used; the inverter will limit its input current to the values stated.

⁽³⁾ Revenue grade inverter P/N: SExxxxA-US000NNR2 (for 7600W inverter:SE7600A-US002NNR2).

⁽⁴⁾ -40 version P/N: SExxxxA-US000NNU4 (for 7600W inverter:SE7600A-US002NNU4).



RoHS



SolarEdge Power Optimizer

Module Add-On For North America

P300 / P320 / P400 / P405



POWER OPTIMIZER

PV power optimization at the module-level

- Up to 25% more energy
- Superior efficiency (99.5%)
- Mitigates all types of module mismatch losses, from manufacturing tolerance to partial shading
- Flexible system design for maximum space utilization
- Fast installation with a single bolt
- Next generation maintenance with module-level monitoring
- Module-level voltage shutdown for installer and firefighter safety



SolarEdge Power Optimizer

Module Add-On for North America

P300 / P320 / P400 / P405

	P300 (for 60-cell modules)	P320 (for high-power 60-cell modules)	P400 (for 72 & 96-cell modules)	P405 (for thin film modules)	
INPUT					
Rated Input DC Power ⁽¹⁾	300	320	400	405	W
Absolute Maximum Input Voltage (Voc at lowest temperature)	48		80	125	Vdc
MPPT Operating Range	8 - 48		8 - 80	12.5 - 105	Vdc
Maximum Short Circuit Current (Isc)	10	11	10		Adc
Maximum DC Input Current	12.5	13.75	12.5		Adc
Maximum Efficiency	99.5				%
Weighted Efficiency	98.8				%
Overvoltage Category	II				
OUTPUT DURING OPERATION (POWER OPTIMIZER CONNECTED TO OPERATING SOLAREDGE INVERTER)					
Maximum Output Current	15				Adc
Maximum Output Voltage	60			85	Vdc
OUTPUT DURING STANDBY (POWER OPTIMIZER DISCONNECTED FROM SOLAREDGE INVERTER OR SOLAREDGE INVERTER OFF)					
Safety Output Voltage per Power Optimizer	1				Vdc
STANDARD COMPLIANCE					
EMC	FCC Part15 Class B, IEC61000-6-2, IEC61000-6-3				
Safety	IEC62109-1 (class II safety), UL1741				
RoHS	Yes				
INSTALLATION SPECIFICATIONS					
Maximum Allowed System Voltage	1000				Vdc
Compatible inverters	All SolarEdge Single Phase and Three Phase inverters				
Dimensions (W x L x H)	128 x 152 x 27.5 / 5 x 5.97 x 1.08	128 x 152 x 35 / 5 x 5.97 x 1.37	128 x 152 x 48 / 5 x 5.97 x 1.89		mm / in
Weight (including cables)	770 / 1.7	930 / 2.05	930 / 2.05		gr / lb
Input Connector	MC4 Compatible				
Output Wire Type / Connector	Double Insulated; MC4 Compatible				
Output Wire Length	0.95 / 3.0		1.2 / 3.9		m / ft
Operating Temperature Range	-40 - +85 / -40 - +185				°C / °F
Protection Rating	IP68 / NEMA6P				
Relative Humidity	0 - 100				%

⁽¹⁾ Rated STC power of the module. Module of up to +5% power tolerance allowed.

PV SYSTEM DESIGN USING A SOLAREDGE INVERTER ⁽²⁾	SINGLE PHASE	THREE PHASE 208V	THREE PHASE 480V	
Minimum String Length (Power Optimizers)	8	10	18	
Maximum String Length (Power Optimizers)	25	25	50	
Maximum Power per String	5250	6000	12750	W
Parallel Strings of Different Lengths or Orientations		Yes		

⁽²⁾ It is not allowed to mix P405 with P300/P400/P600/P700 in one string.



Grounding SolarEdge Power Optimizers – Application Note

Introduction

PV Systems with module-level electronics (DC-DC power optimizers or micro-inverters) introduce another PV system component which must be grounded to meet NEC¹ requirements. This paper outlines the differing requirements, provides guidelines on how to properly ground SolarEdge power optimizers and supplies a list of racking models and their appropriate grounding method.

There are two types of grounding connections used in PV systems:

- *Equipment grounding* – Equipment grounding is required for all electrical devices with exposed metal surfaces, as outlined in 690.43-690.46 and, by reference, Table 250.122. Methods for equipment grounding of SolarEdge power optimizers are detailed in the examples below.
- *Grounding Electrode Conductor / System Bonding Jumper* – not required in SolarEdge systems. In a system utilizing a grounded array the Grounding Electrode Conductor is required by NEC 690.47-690.48 and 250.168. This conductor provides the bonding between the grounding system and one of the PV circuit conductors (PV negative or PV positive), and is required to be contiguous or irreversibly spliced. SolarEdge systems utilize ungrounded PV arrays as permitted under Article 690.35. When properly installed SolarEdge systems meet the requirements of 690.35, and therefore no Grounding Electrode Conductor/System Bonding Jumper is required.

Equipment Grounding of SolarEdge Power Optimizers

Use the following power optimizer grounding methods depending on the mounting structures used for the PV system installation.

For full details refer to the *SolarEdge Installation Guide*.

- 1** For power optimizers mounted on a grounded metal structure, use the 5/16" stainless steel grounding star washer (provided with the power optimizer) between the railing and the flat side of the optimizer mounting bracket. Apply torque of 9.5 N*m / 7 lb*ft.

The star washer is used for attachment of the power optimizer to galvanized steel, stainless steel and anodized aluminum structures. It penetrates the galvanized or anodized coating of the structure to ensure a low-resistance connection. The star washer is approved as a listed grounding means in accordance with the requirements of NEC Article 690.43(C).



Figure 1: Star washer

- 2** If the star washer cannot be used, such as when mounting on some grounded rails with sliding nut fasteners, use the SolarEdge grounding plate between the railing and the flat side of the optimizer mounting bracket. Apply torque of 9.5 N*m / 7 lb*ft. The plate penetrates the galvanized or anodized coating of the structure to ensure a low-resistance connection and compliance with the ground impedance requirements per the UL1741 certification for SolarEdge power optimizers. The grounding plate may be purchased in bulk from SolarEdge (part number SE-GNDPLATE-100).

¹ All Code references are to NFPA 70, NEC 2011 Edition.



Figure 2: Grounding plate

- 3** For power optimizers mounted on un-grounded (non-metallic) structures, or in case the star washer or the grounding plate cannot be used: Use the SolarEdge grounding lug with an equipment-grounding conductor. After connecting the lug to the power optimizer, connect the equipment-grounding conductor to the grounding terminal. Tighten the screws connecting the power optimizer to the rack and the grounding terminal screw with a torque of 9.5 N*m / 7 lb*ft.

The grounding terminal will accept a wire size of 6-14 AWG and must be sized for equipment in accordance with NEC Table 250.122.

The grounding lugs may be purchased in bulk from SolarEdge (part number SE-GNDLUG-100). The lug kit includes four stainless steel parts to prevent corrosion of the copper grounding conductor and of the aluminum housing of the power optimizer.



Figure 3: Grounding lug

Racking Models and Corresponding Grounding Method of SolarEdge Power Optimizers

Manufacturer	Model	Fastener	Grounding Method
A.E.T (Applied Energy Technologies)	Rayport P (for pitched roofs)	Accessory Hardware Kit 80677	Supplied SST Star Washer
	Rayport B (ballasted)	Accessory Hardware Kit 80672	Supplied SST Star Washer
	Rayport T6 (ground-mount)	Accessory Hardware Kit 80235	Supplied SST Star Washer
	Rayport G-Eco (ground-mount)	Accessory hardware kit 81068	Supplied SST Star Washer
Conergy	Suntop IV	Quickstone slide nut with M8 socket head cap screw	Grounding lug and conductor
Creotecc	Creomount (flush-mount)		Grounding lug and conductor
	Base Rail	Drilled and tapped with 1/4" inch hardware	Supplied SST Star Washer
DPW Solar (Direct Power and Water)	Power Rail	0.25 inch hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
Ecolibrium Solar	Ecofoot 2 for flat roofs	Rocker Bracket, Nut, Serrated Flange Hex, 5/16", Bolt, Serrated Flange Hex, 5/16"	Supplied SST Star Washer
	EcoX mounting clamp	Bolt, Serrated Flange (part of the EcoX clamp)	
Haticon	Haticon Rail		SolarEdge grounding plate
IronRidge	Light Rail XRL	0.25 inch hex head bolt, washer, nut, for top rail mount (#29-5003-005)	Supplied SST Star Washer
	Standard Rail XRS	0.25 inch hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
Krannich Solar	K2 Systems	Slide nut with M8 socket head cap screw	SolarEdge grounding plate
Mage	Systemtec	T-bolt and hardware	Supplied SST Star Washer
Mounting Systems Inc	Alpha+	Slide nut with M8 socket head cap screw	SolarEdge grounding plate
mounts4solar	Rail 6.0	M8 SS hammer head bolt	Supplied SST Star Washer
NCP Solar	Flush Mount Racking System Ballasted Roof Racking System	Slide nut with 5/16" socket head cap screw	Grounding lug and conductor
ProSolar	Rooftrac	Channel nut with 5/16" hardware	Supplied SST Star Washer
	Groundtrac Rail	Channel nut with 5/16" hardware	Supplied SST Star Washer

Manufacturer	Model	Fastener	Grounding Method
Renusol	Renusol VS	T-bolt and hardware	Supplied SST Star Washer
Schuco	SolarEZ	ezUniversal Screws (M8x14) ezAnchor Blocks	Supplied SST Star Washer
SnapNRack	S100 Mounting system	Series 100 attachment kit	SolarEdge grounding plate kit
	S100-UL	Series 100 attachment kit	SolarEdge grounding plate kit
	Standard Rail	Slide nut	Grounding lug and conductor
Sollega	InstaRack	Top spring nut with 5/16" hex head bolt	Supplied SST Star Washer
Sunlink	Core-RMS 490-000000	5/16" hardware; 09-00010-01 screw, 09-0002-01 nut, 09-00154-01 washer	Supplied SST Star Washer
	Precision-RMS 690-000010	5/16" hardware; 09-00010-01 screw, 09-0002-01 nut, 09-00154-01 washer	Supplied SST Star Washer
	Sunlink-RMS	Drilled and tapped with 5/16" inch hardware	Supplied SST Star Washer
Unirac	SunFrame	Drilled and tapped with 1/4" inch hardware	Supplied SST Star Washer
	Solarmount Light	1/4" hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
	Solarmount Standard	1/4" hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
	Solarmount HD	1/4" hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
	SolarMount-I	1/4" hex head bolt, washer, nut, for top rail mount	Supplied SST Star Washer
	SolarMount-E (Evolution)	Drilled and tapped with 5/16" inch hardware	Supplied SST Star Washer



by Schneider Electric

List Price \$816.00 USD

Availability **Stock Item: This item is normally stocked in our distribution facility.**

Technical Characteristics

Number of Poles	3-Pole
Terminal Type	Lugs
Type of Duty	General Duty
Maximum Voltage Rating	240VAC
Wire Size	#12 to #1/0 AWG(Al) - #14 to #1/0 AWG(Cu)
Depth	6.50 Inches
Height	17.50 Inches
Action	Single Throw
Ampere Rating	100A
Width	8.50 Inches
Approvals	UL Listed File Number E2875
Enclosure Rating	NEMA 3R
Enclosure Type	Rainproof and Sleet/Ice proof (Indoor/Outdoor)
Factory Installed Neutral	No
Disconnect Type	Non-Fusible
Mounting Type	Surface

Shipping and Ordering

Category	00106 - Safety Switch, General Duty, 30 - 200 Amp, NEMA3R
Discount Schedule	DE1A
GTIN	00785901491828
Package Quantity	1
Weight	14.78 lbs.
Availability Code	Stock Item: This item is normally stocked in our distribution facility.
Returnability	Y
Country of Origin	US

As standards, specifications, and designs change from time to time, please ask for confirmation of the information given in this document.

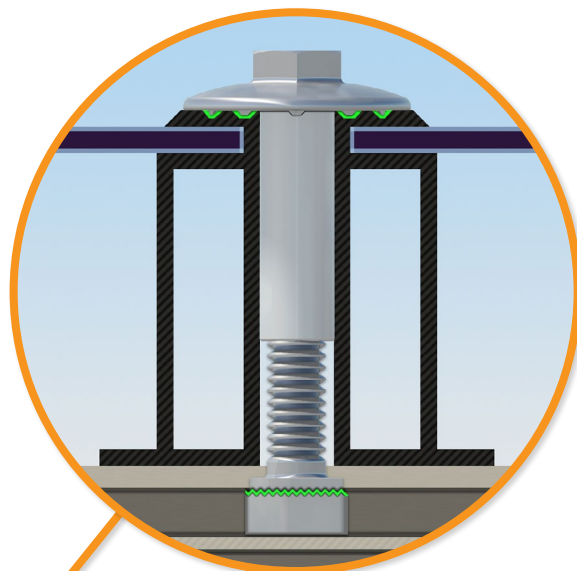


UFO Family of Components

Simplified Grounding for Every Application

The UFO family of components eliminates the need for separate grounding hardware by bonding solar modules directly to IronRidge XR Rails. All system types that feature the UFO family—Flush Mount, Tilt Mount and Ground Mount—are fully listed to the UL 2703 standard.

UFO hardware forms secure electrical bonds with both the module and the rail, resulting in many parallel grounding paths throughout the system. This leads to safer and more reliable installations.



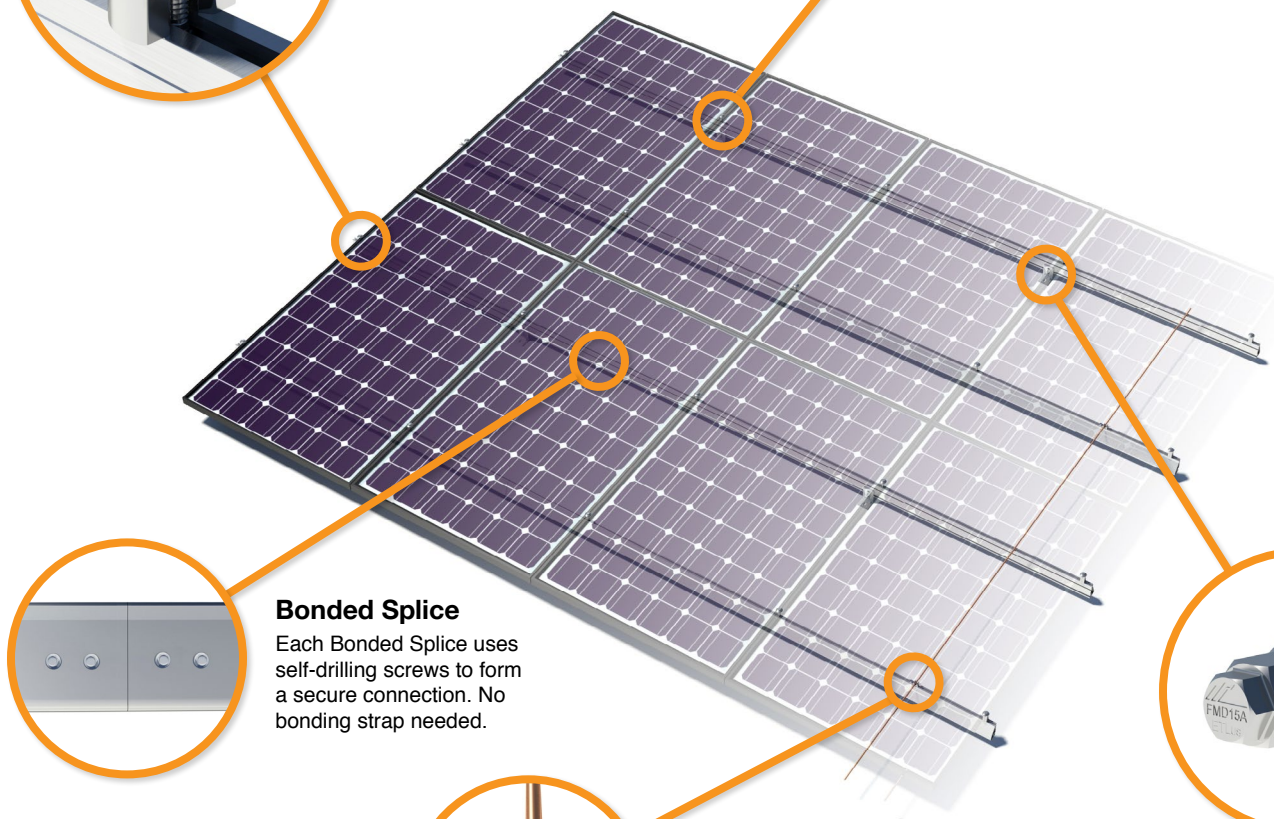
Universal Fastening Object (UFO)

The UFO securely bonds solar modules to XR Rails. It comes assembled and lubricated, and can fit a wide range of module heights.



Stopper Sleeve

The Stopper Sleeve snaps onto the UFO, converting it into a bonded end clamp.



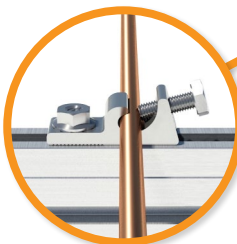
Bonded Splice

Each Bonded Splice uses self-drilling screws to form a secure connection. No bonding strap needed.



Grounding Lug

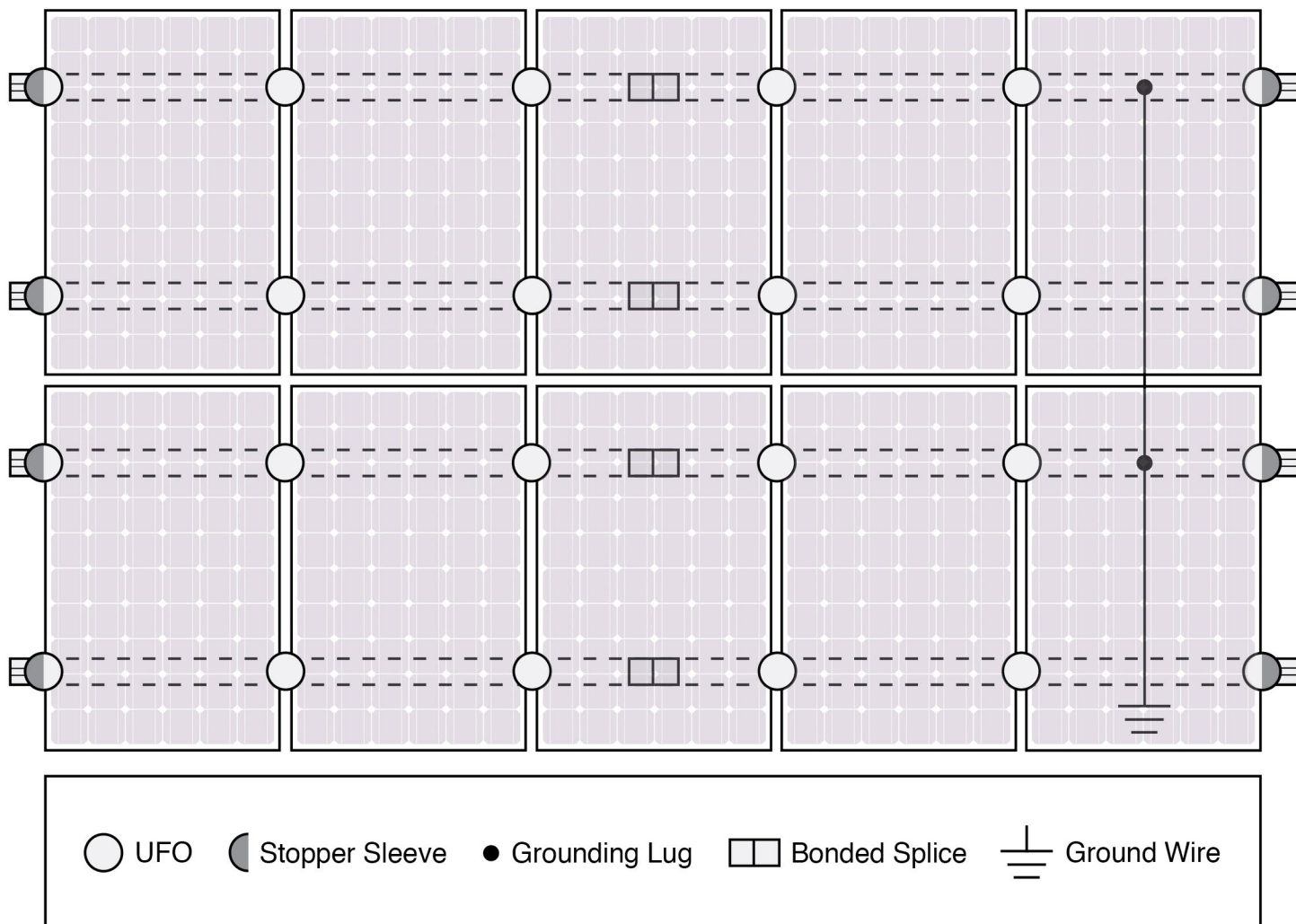
A single Grounding Lug connects an entire row of PV modules to the grounding conductor.



Bonded Attachments

The bonding bolt attaches and bonds the L-foot to the rail. It is installed with the same socket as the rest of the system.

System Diagram



⚡ Approved Enphase microinverters can provide equipment grounding of IronRidge systems, eliminating the need for grounding lugs and field installed equipment ground conductors (EGC). A minimum of two microinverters mounted to the same rail and connected to the same Engage cable is required. Refer to installation manuals for additional details.

UL Certification

The IronRidge Flush Mount, Tilt Mount, and Ground Mount Systems have been listed to UL 2703 by Intertek Group plc.

UL 2703 is the standard for evaluating solar mounting systems. It ensures these devices will maintain strong electrical and mechanical connections over an extended period of time in extreme outdoor environments.

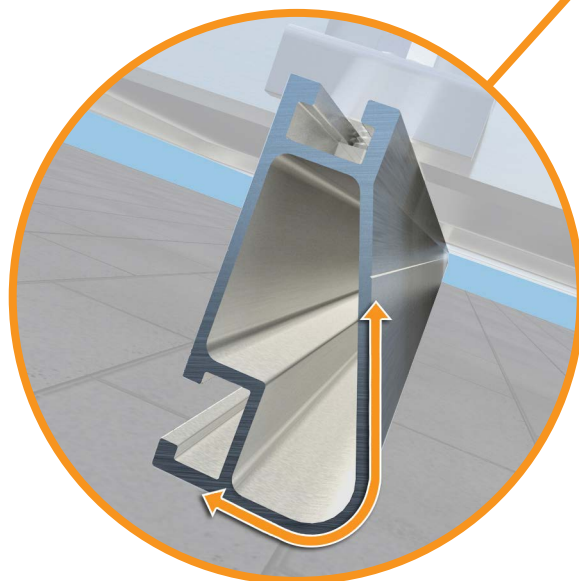
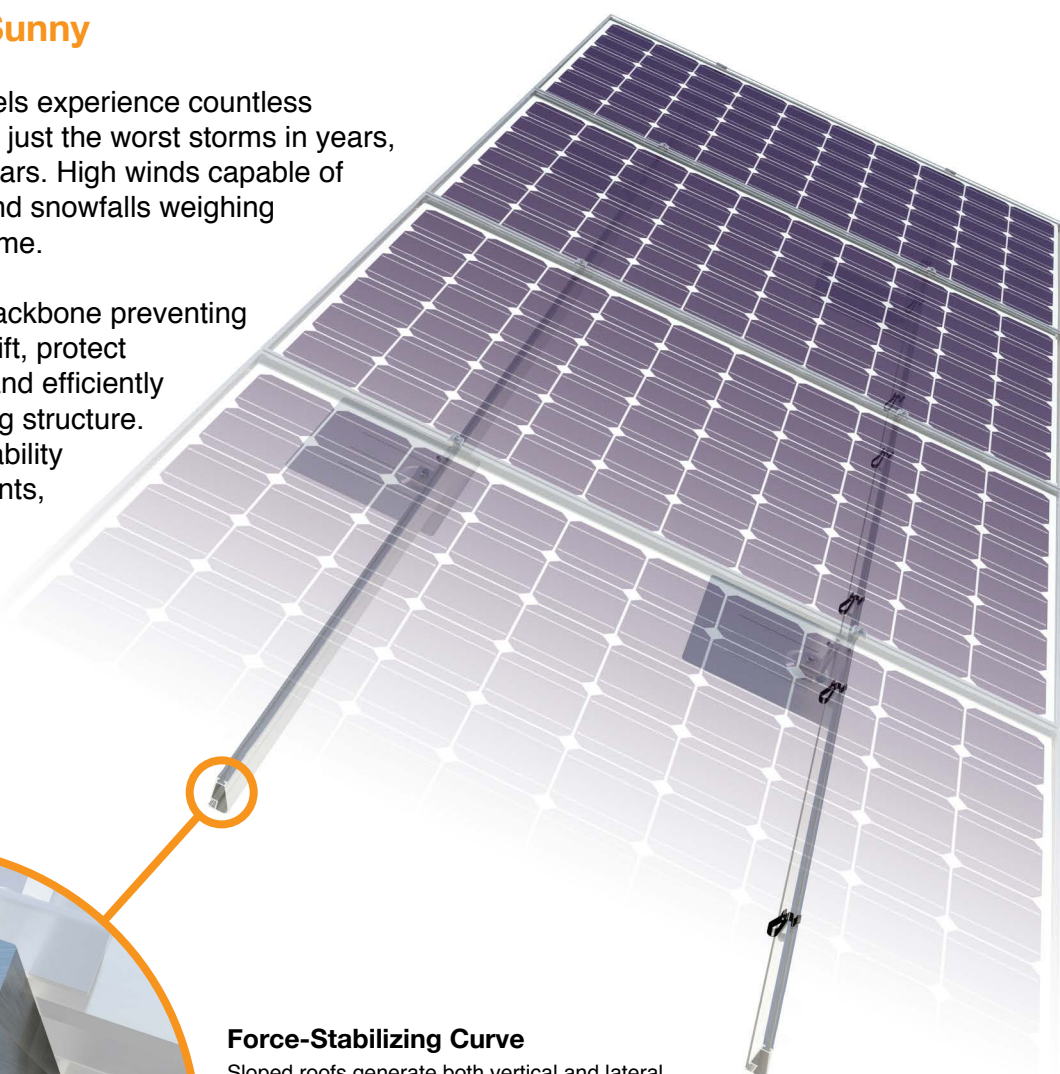
 [Go to IronRidge.com/UFO](https://www.ironridge.com/UFO)

Cross-System Compatibility			
Feature	Flush Mount	Tilt Mount	Ground Mount
XR Rails	✓	✓	XR1000 Only
UFO/Stopper	✓	✓	✓
Bonded Splice	✓	✓	N/A
Grounding Lugs	1 per Row	1 per Row	1 per Array
Microinverters & Power Optimizers	Enphase - M250-72, M250-60, M215-60, C250-72 Darfon - MIG240, MIG300, G320, G640 SolarEdge - P300, P320, P400, P405, P600, P700, P730		
Fire Rating	Class A	Class A	N/A
Modules	Tested or Evaluated with over 400 Framed Modules Refer to installation manuals for a detailed list.		

Solar Is Not Always Sunny

Over their lifetime, solar panels experience countless extreme weather events. Not just the worst storms in years, but the worst storms in 40 years. High winds capable of ripping panels from a roof, and snowfalls weighing enough to buckle a panel frame.

XR Rails are the structural backbone preventing these results. They resist uplift, protect against buckling and safely and efficiently transfer loads into the building structure. Their superior spanning capability requires fewer roof attachments, reducing the number of roof penetrations and the amount of installation time.



Force-Stabilizing Curve

Sloped roofs generate both vertical and lateral forces on mounting rails which can cause them to bend and twist. The curved shape of XR Rails is specially designed to increase strength in both directions while resisting the twisting. This unique feature ensures greater security during extreme weather and a longer system lifetime.

Compatible with Flat & Pitched Roofs



XR Rails are compatible with FlashFoot and other pitched roof attachments.



IronRidge offers a range of tilt leg options for flat roof mounting applications.

Corrosion-Resistant Materials

All XR Rails are made of marine-grade aluminum alloy, then protected with an anodized finish. Anodizing prevents surface and structural corrosion, while also providing a more attractive appearance.



XR Rail Family

The XR Rail Family offers the strength of a curved rail in three targeted sizes. Each size supports specific design loads, while minimizing material costs. Depending on your location, there is an XR Rail to match.



XR10

XR10 is a sleek, low-profile mounting rail, designed for regions with light or no snow. It achieves 6 foot spans, while remaining light and economical.

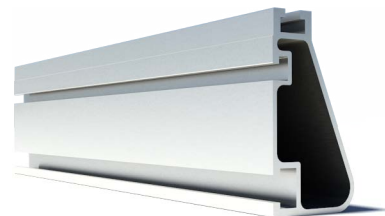
- 6' spanning capability
- Moderate load capability
- Clear anodized finish
- Internal splices available



XR100

XR100 is the ultimate residential mounting rail. It supports a range of wind and snow conditions, while also maximizing spans up to 8 feet.

- 8' spanning capability
- Heavy load capability
- Clear & black anodized finish
- Internal splices available



XR1000

XR1000 is a heavyweight among solar mounting rails. It's built to handle extreme climates and spans 12 feet or more for commercial applications.

- 12' spanning capability
- Extreme load capability
- Clear anodized finish
- Internal splices available

Rail Selection

The following table was prepared in compliance with applicable engineering codes and standards. Values are based on the following criteria: ASCE 7-10, Roof Zone 1, Exposure B, Roof Slope of 7 to 27 degrees and Mean Building Height of 30 ft. Visit IronRidge.com for detailed span tables and certifications.

Load		Rail Span					
Snow (PSF)	Wind (MPH)	4'	5' 4"	6'	8'	10'	12'
None	100	XR10		XR100		XR1000	
	120						
	140						
	160						
10-20	100						
	120						
	140						
	160						
30	100						
	160						
40	100						
	160						
50-70	160						
80-90	160						

Background

All roofing products are tested and classified for their ability to resist fire.

Recently, these fire resistance standards were expanded to include solar equipment as part of the roof system. Specifically, this requires the modules, mounting hardware and roof covering to be tested together as a system to ensure they achieve the same fire rating as the original roof covering.

Adoption of these new requirements will begin in California in 2015 and extend to the rest of the country in 2016.

IronRidge Certification

In August 2014, IronRidge was the first company to receive a Class A Fire Rating—the highest possible rating—from Intertek Group plc., a Nationally Recognized Testing Laboratory.

IronRidge Roof Mount products were tested on flat and sloped roofs in accordance with the new UL 1703 & UL 2703 test standards. The testing evaluated the system's ability to resist flame spread, burning material and structural damage to the roof.

Refer to the table below to determine the requirements for achieving a Class A Fire Rating on your next project.

Fire Testing Process

Test Setup

Solar Modules

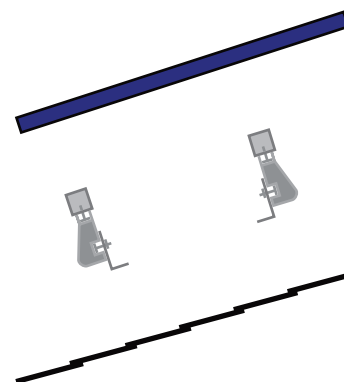
Solar modules are given a Type classification based on their materials and construction.

Mounting System

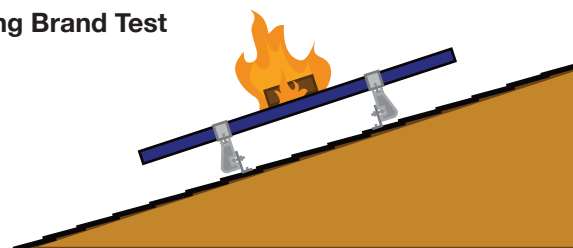
Mounting is tested as part of a system that includes type-tested modules and fire-rated roof covering.

Roof Covering

Roof covering products are given a Fire Class Rating of A, B or C based on their tested fire resistance.

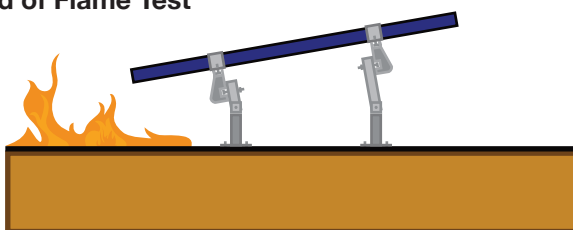


Burning Brand Test







A burning wooden block is placed on module as a fan blows at 12 mph. Flame cannot be seen on underside of roof within 90 minutes.

Spread of Flame Test



Flame at southern edge of roof is aimed up the roof as a fan blows at 12 mph. The flame cannot spread 6 feet or more in 10 minutes.

Roof Slope	Mount	Module	Fire Rating*
Steep Slope (≥ 9.5 degrees)	Flush 	Type 1, 2, & 3	Class A
	Tilt 	Type 1 & 2	Class A
Low Slope (< 9.5 degrees)	Flush 	Type 1, 2, & 3	Class A
	Tilt 	Type 1, 2, & 3	Class A

*Class A rated PV systems can be installed on Class A, B, and C roofs.

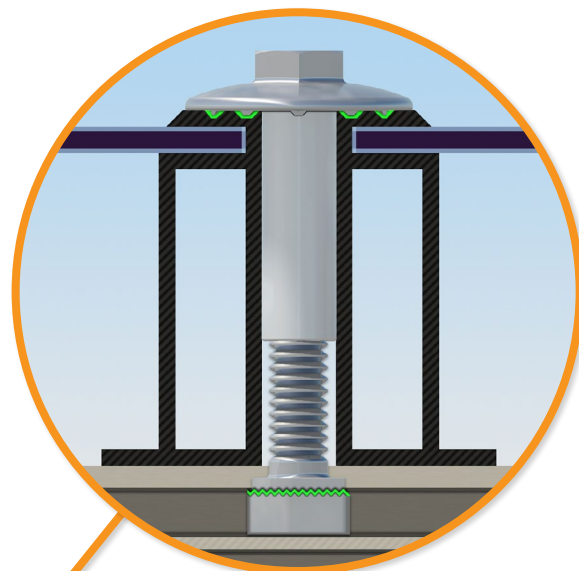


UFO Family of Components

Simplified Grounding for Every Application

The UFO family of components eliminates the need for separate grounding hardware by bonding solar modules directly to IronRidge XR Rails. All system types that feature the UFO family—Flush Mount, Tilt Mount and Ground Mount—are fully listed to the UL 2703 standard.

UFO hardware forms secure electrical bonds with both the module and the rail, resulting in many parallel grounding paths throughout the system. This leads to safer and more reliable installations.



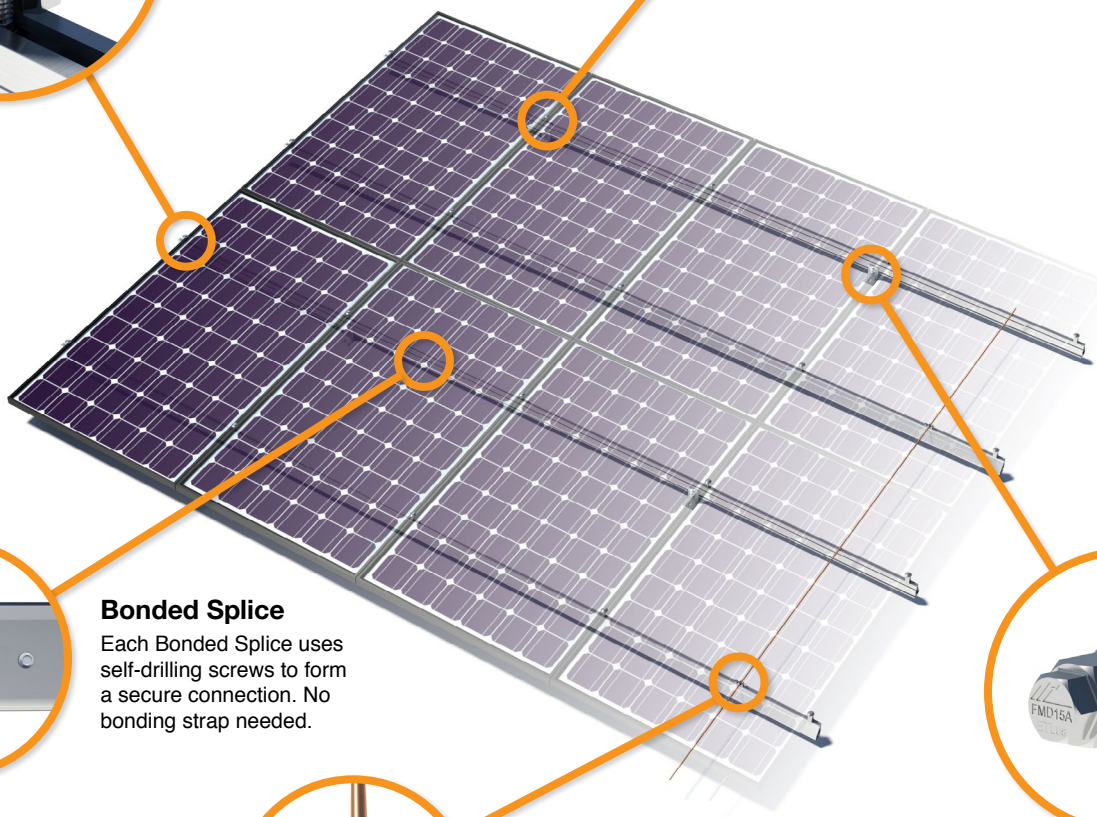
Universal Fastening Object (UFO)

The UFO securely bonds solar modules to XR Rails. It comes assembled and lubricated, and can fit a wide range of module heights.



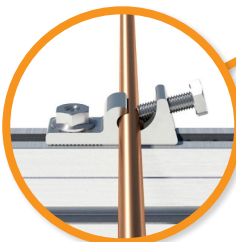
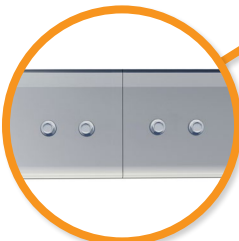
Stopper Sleeve

The Stopper Sleeve snaps onto the UFO, converting it into a bonded end clamp.



Bonded Splice

Each Bonded Splice uses self-drilling screws to form a secure connection. No bonding strap needed.



Grounding Lug

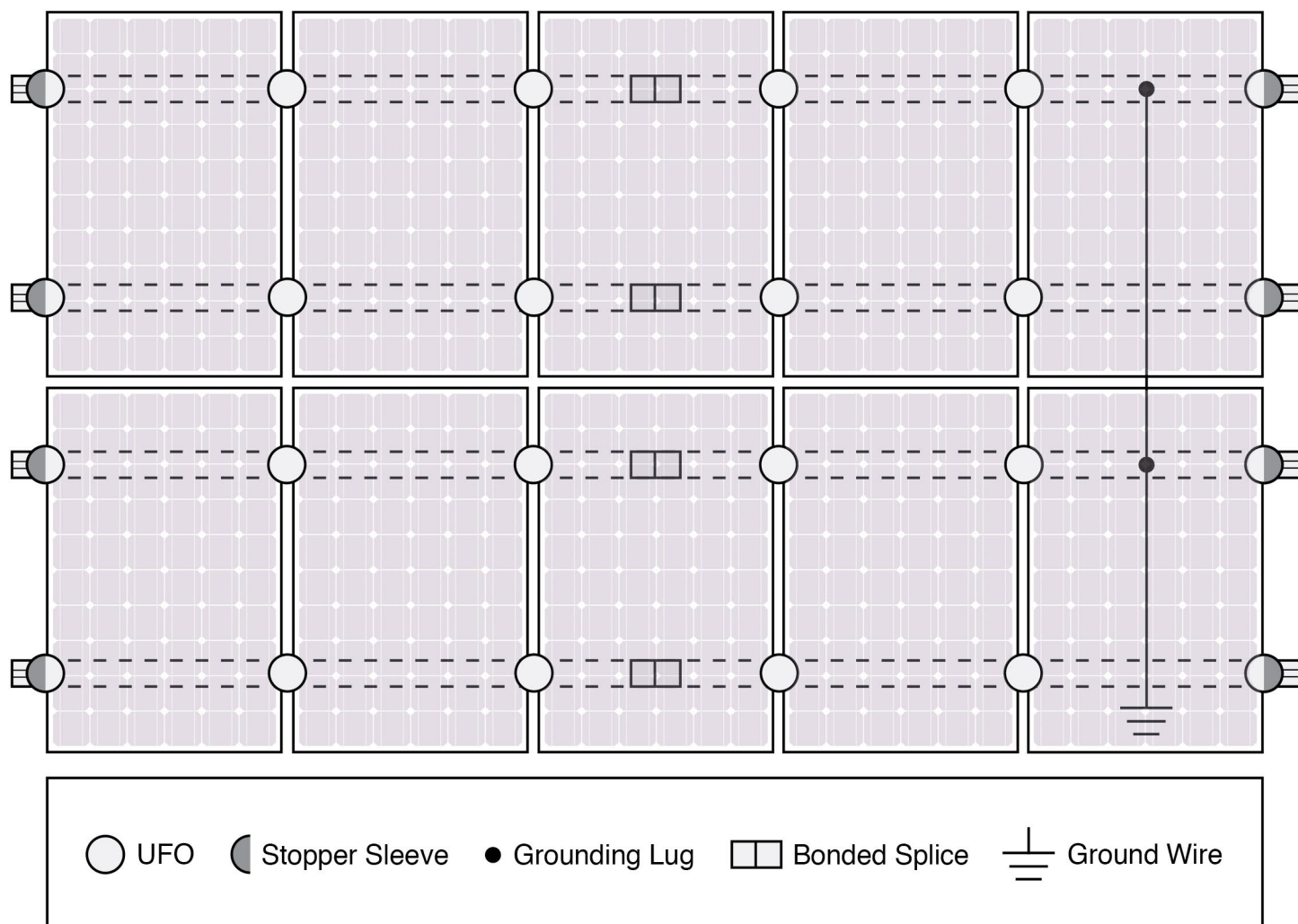
A single Grounding Lug connects an entire row of PV modules to the grounding conductor.



Bonded Attachments

The bonding bolt attaches and bonds the L-foot to the rail. It is installed with the same socket as the rest of the system.

System Diagram



⚠ Approved Enphase microinverters can provide equipment grounding of IronRidge systems, eliminating the need for grounding lugs and field installed equipment ground conductors (EGC). A minimum of two microinverters mounted to the same rail and connected to the same Engage cable is required. Refer to installation manuals for additional details.

UL Certification

The IronRidge Flush Mount, Tilt Mount, and Ground Mount Systems have been listed to UL 2703 by Intertek Group plc.

UL 2703 is the standard for evaluating solar mounting systems. It ensures these devices will maintain strong electrical and mechanical connections over an extended period of time in extreme outdoor environments.

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Cross-System Compatibility			
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Fire Rating	Class A	Class A	N/A
Modules	Tested or Evaluated with over 400 Framed Modules Refer to installation manuals for a detailed list.		



Built for solar's toughest roofs.

Anchored by the strongest rails in solar, the IronRidge Roof Mount System provides the durability and versatility to handle virtually any residential or commercial rooftop.

The unique curved profile of the XRS Rail increases its strength while also giving it an attractive look, making it very customer-friendly. In addition, IronRidge Rails are certified for integrated grounding, which eliminates separate module grounding components and procedures, making it very installer-friendly.



Strongest Rails

Longer spans between attachments, fewer roof penetrations.



PE Certified

Pre-stamped engineering letters available in most states.



Simple Assembly

Versatile and adjustable components simplify any array design.



Design Software

Online tool generates a complete bill of materials in minutes.



Integrated Grounding

UL 2703 system eliminates separate module grounding components.



20 Year Warranty

Twice the protection offered by competitors.

Rails

Standard Rails (XRS)



Curved rails increase spanning capabilities and aesthetics.

- Available in clear and black anod.
- Multiple sizes between 12' and 18'
- Made of corrosion resistant alum.

Light Rails (XRL)



Lightweight rails reduce cost for lighter load conditions.

- Available in clear and black anod.
- Multiple sizes between 12' and 18'
- Made of corrosion resistant alum.

Rail Splices

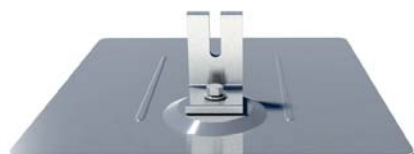


Internal splices seamlessly connect rails, allowing easy L-foot installation.

- Different versions for XRS and XRL
- Includes self-tapping screws
- Available with grounding straps

Attachments

Flashings



FlashFoot™ is an all-in-one mounting product for composition shingle roofs.

- Integrated L-Foot and hardware
- Certified compliant with IBC & IRC
- PE certified with IronRidge Rails

Adjustable L-Feet



Slotted L-feet provide adaptable attachment to standoffs and flashings.

- Available in clear and black anod.
- Works with XRS and XRL rails
- Compatible with third-party parts

Tilt Leg Kits



Fixed and adjustable tilt legs allow adjustment in all three axes.

- Attaches directly to XRS and XRL
- Ships with all required hardware
- Multiple sizes for 5-45 deg. tilts

Clamps & Accessories

End Clamps



Secure modules to the end of the rails.

- Clear and black anod.
- Sizes from 1.22" to 2.3"
- Optional bottom clamps

Mid Clamps



Fasten modules in the middle of the rails.

- Clear and black anod.
- T-bolt or hex nut designs
- Grounding clamp offered

End Caps



Provide a finished look for rails.

- Keeps out debris
- Black polycarbonate
- UV protected

Wire Clips



Organize both DC and AC wiring along the rails.

- Attaches to both rails
- Supports ten 5mm wires
- UV protected

Online Software



The IronRidge Design Assistant helps you go from rough layout to fully engineered system. For free.

[Go to ironridge.com/rm](http://ironridge.com/rm)



Available with Integrated Grounding

IronRidge offers UL 2703 certified components that automatically bond modules and rails to ground.

[Go to ironridge.com/ig](http://ironridge.com/ig)

CLASSIFICATION

Constructional Data Report (CDR)

1.0 Reference and Address			
Report Number	101541132LAX-002	Original 22-May-2014	Revised: 15-Jan-2016
Standard(s)	UL Subject 2703 Outline of Investigation for Rack Mounting Systems and Clamping Devices for Flat-Plate Photovoltaic Modules and Panels, Issue Number: 1, October 4, 2010		
Applicant	IronRidge, Inc.	Manufacturer 1	IronRidge, Inc.
Address	1495 Zephyr Ave Hayward, CA 94544	Address	1495 Zephyr Ave Hayward, CA 94544
Country	USA	Country	USA
Contact	Yann Schwarz	Contact	Jim Norsworthy Or Dave Taggart
Phone	(800) 227-9523 (510) 225-0973	Phone	(707) 363-3025 (800) 227-9523
FAX	(707) 459-1833	FAX	(510) 225-0975
Email	yschwarz@ironridge.com	Email	jnorsworthy@ironridge.com dtaggart@ironridge.com
Manufacturer 2	Precision Die & Stamping, Inc.		
Address	1704 W. 10th Street Tempe, AZ 85281		
Country	USA		
Contact	Andy Frola		
Phone	(480) 967-2038		
FAX	(480) 829-0838		
Email	andy@precisiondie.com		

2.0 Product Description	
Product	XR Rails with Integrated Grounding.
Brand name	IronRidge Roof Mount
Description	<p>The product covered by this report is the IronRidge Rails with Integrated Grounding solar roof mounting system. This system is designed to provide bonding and grounding to photovoltaic modules. The mounting system employs anodized aluminum rails that are roof mounted using aluminum Extruded L Foot brackets. The mounting rails in this report are XRL, XR10, XR100 and XR1000 Rail. All rails have an optional aluminum splice which ties the rails together to extend their length.</p> <p>A grounding strap and stainless steel hardware are required for penetrating the anodized coating of the rails, creating a bonded connection from rail to rail. 304 stainless steel Grounding Mid Clamp and aluminum End Clamps are used to attach and support framed photovoltaic modules to the system. The End Clamps are not used as a grounding means.</p> <p>The Grounding Mid Clamps are installed onto the module frame by using a 18-8 stainless steel serrated T-Bolt and a 18-8 stainless steel Flange Hex Nut that gets screwed onto the rails to a specified torque. The retention teeth of the clamp and bolt penetrate the anodized coating of the photovoltaic modules frame and rail to contact the metal, creating a bonded connection from module to module and module to rail.</p> <p>The grounding of the entire system is intended to be in accordance with the latest edition of the National Electrical Code, including NEC 250: Grounding and Bonding, and NEC 690: Solar Photovoltaic Systems. Any local electrical codes must be adhered in addition to the national electrical codes. An entire array, regardless of size, is grounded via one grounding lug. The WEEB Grounding Lug is secured to XRL, XR10, XR100 or XR1000 Rail's top slot using stainless steel hex bolt or T-Bolt, flat washer, split lock washer, and nut, tightened to manufacture's specified torque. The WEEB Grounding Lug is intended for use with one solid or stranded copper wire, conductor size 14 AWG though 6 AWG. The Titan Grounding Lug is secured to XRL, XR10, XR100 or XR1000 Rail's side center cavity of rails using stainless steel T-bolt, k-lock nut, star washer, and machine screw. The Titan Grounding Lug is intended for use with one solid or stranded copper wire, conductor size 14 AWG though 4 AWG.</p>
Models	IR XR followed by 4 Alphanumeric Characters
Model Similarity	N/A
Ratings	<p>Fuse Rating: 20 A</p> <p>Fire Class Resistance Rating:</p> <ul style="list-style-type: none"> - Class A for Steep Slope Flush-Mount (Symmetrical) Applications when using Type 1, Type 2 and Type 3, Listed Photovoltaic Module. - Class A for Low Slope Flush-Mount (Symmetrical) Applications when using Type 1, Type 2 and Type 3, Listed Photovoltaic Module. - Class A for Steep Slope Tilt-Mount (Asymmetrical) Applications when using Type 1 and Type 2, Listed Photovoltaic Module. - Class A for Low Slope Tilt-Mount (Asymmetrical) Applications when using Type 1, Type 2 and Type 3, Listed Photovoltaic Module.

2.0 Product Description

These systems were evaluated or tested for bonding and grounding with the following PV-Module frames:

Motech - Black or Silver Frames

Models:

IM and XS series, 60 and 72 cell modules with 40 mm frame height.
IM and XS series, 60 and 72 cell modules with 45 mm frame height.
IM and XS series, 60 and 72 cell modules with 50 mm frame height.

Suntech - Black or Silver Frames

Models:

Wdb, Wde, and Wd series, 60 and 72 cell modules with 35 mm frame height.
Vd series, 60 and 72 cell modules with 50 mm frame height.

ET Solar - Black or Silver Frames

Models:

ET Solar 60 cell modules with 35 and 40 mm frames
ET-Y660xxxZZ
Where "Y" can be P, L, or M; "xxx" refers to the module power rating; "ZZ" can be WB, WW, BB, WBAC, or BBAC

ET Solar 72 cell modules with 40 and 50 mm frames
ET-Y672xxxZZ
Where "Y" can be P, L, or M; "xxx" refers to the module power rating; "ZZ" can be WB, WW, BB, or WBG

Hyundai - Black or Silver Frames

Models:

SG, MG, RG and TG Series, 60 cell modules with 35 mm frame height.
MI, RI and TI Series, 72 cell modules with 50 mm frame height.

Yingli - Black or Silver Frames

Models:

Panda and YGE models, 60 cell modules with 40 mm or 35 mm frame height.
YGE models, 72 cell modules with 50 mm or 40 mm frame height.

Kyocera -

Models:

KD(xxx)GX-LPU, KD(xxx)GX-LFU, KD135SX-UPU, KD(xxx)GX-LFBS, KD(xxx)GX-LPB
KD(xxx)GX-LFB, KD(xxx)GX-LFB2, KD(xxx)GX-LPB2
KD135GX-LPS, KD140GX-LPS, KD140SX-UPU
KU(xxx)-3AC, KU(xxx)-4AC, KU(xxx)-5AC, KU(xxx)-3BC, KU(xxx)-4BC
KU(xxx)-5BC, KU(xxx)-6BC, KU(xxx)-8BC, KU(xxx)-3FC, KU(xxx)-4FC
KU(xxx)-5FC, KU(xxx)-6FC, KU(xxx)-4UC, KU(xxx)-5UC.
Where xxx refers to the module power rating

Canadian Solar - Black or Silver Frames

Models:

CS6P-M 60 Cell Modules with a 40mm frame height.
CS6P-P 60 Cell Modules with a 40mm frame height.
CS6X-M 72 cell modules with a 40mm frame height.
CS6X-P 72 cell modules with a 40mm frame height.

2.0 Product Description

LG Modules - Black or Silver Frames

Models:

LG 60 cell modules with 35 mm frames:

LGxxx1z-b3

Where xxx is the module power rating, "y" can be A,N or S, "z" can be C or K, and "b" can be A, B, or G.

LG 60 cell Modules with 40mm frames:

LGxxx1z-G4

Where "xxx" is the module power rating, "y" can be N or S, and "z" can be C or K

LG 72 Cell Modules with 46mm frames:

LGxxx2z-b3

Where "xxx" is the module power rating, "y" can be N or S, "z" can be C or K, and "b" can be A, B, or G

Suniva Modules - Black or Silver Frames

Models:

60 Cell Modules with 35 and 40mm frames:

OPTxxx-60-A-YYY-Z

MVXxxx-60-A-YYY-Z

Where "xxx" is the module power rating, "A" is either 4 or 5, "YYY" is either 100,101,700,1B0, or 1B1, and "z" is blank or B.

72 Cell Modules with 38, 46, and 50mm frames:

OPTxxx-72-A-YYY-Z

MVXxxx-72-A-YYY-Z

Where "xxx" is the module power rating, "A" is either 4 or 5, "YYY" is either 100,101,700,1B0, or 1B1, and "Z" is either blank or B

Hanwha Modules - Black or Silver Frames

Models:

HSL72P6-PA-1-xxx(50mm frame)

HSL72P6-PB-1-xxx(45mm frame)

HSL60P6-PB-1-xxx(40mm frame)

HSL60P6-PA-1-xxx(45mm frame)

The model number can be followed with a "B"

Where xxx is the module power rating

Trina Solar Modules - Black or Silver Frames

Models:

TSM-xxxPA05 (35mm frame height)

TSM-xxxPC05 (35mm frame height)

TSM-xxxPD05 (35mm frame height)

TSM-xxxPA05 (40mm frame height)

TSM-xxxPA14 (46mm frame height)

TSM-xxxPD14 (40mm frame height)

TSM-xxxPC14 (40mm frame height)

The model number can be followed by A and .05 or .08

Where xxx refers to module power rating

Other Ratings

2.0 Product Description

SolarWorld Modules - Black or Silver Frames

Models:

Sunmodule Plus SW-xxx,
Sunmodule Protect SW-xxx,
Sunmodule XL SW-xxx
Mono or Poly with 31, 33, or 46 mm frame height.
Where xxx refers to the module power rating

Phono Solar Modules - Black or Silver Frames

Models:

PSxxxP-20/U, PSxxxM-20/U, PSxxxP-24/T, PSxxxM-24/T with 40mm frame height
Where xxx refers to module power rating

SunEdison modules - Black or Silver Frames

Models:

SE-QxxxBCC-3Y, SE-MxxxBCC-3Y, SE-FxxxBCC-3Y, SE-PxxxBCC-3Y, SE-QxxxBMC-3Y
SE-MxxxBMC-3Y, SE-FxxxBMC-3Y, SE-DxxxBMC-3Y, SE-PxxxBMC-3Y with 50mm frame
height.
Where xxx refers to module power rating

Hanwha Q CELLS modules - Black or Silver Frames

Models:

Hanwha QCells 60 cell modules with 32 mm frames
Q.PLUS-G4-xxx
Q.PRO BFR-G4-xxx
where xxx refers to module power rating

Hanwha QCells 60 cell modules with 35 mm frames:

Q.PRO-G3-xxx
Q.PRO-BFR-G3-xxx
Q.PEAK BLK G3-xxx
Q.PLUS G3-xxx

where xxx refers to module power rating

Hanwha QCells 72 cell modules with 35 mm frames:

Q.PRO L-G4y-xxx
Q.PLUS L-G4y-xxx

where "y" can be blank, 1 or 2 and "xxx" refers to module power rating

Hanwha QCell 72 cell modules with 40 mm frames:

Q.PRO L-G2xxx
Q.PRO L-G3y-xxx

where "y" can be blank or 1 and "xxx" refers to module power rating

Hanwha QCell 72 cell modules with 42 mm frames:

Q.PRO L-G2-xxx

where "xxx" refers to module power rating

2.0 Product Description

Renesola Modules - Black or Silver Frames

Models: Mono and Virtus II Modules:

JCxxxM-24/Abh, JCxxxS-24/Abh, JCxxxF-24/Abh, JCxxxM-24/Abh-b, JCxxxS-24/Abh-b
JCxxxF-24/Abh-b, JCxxxM-24/Ab, JCxxxM-24/Abv, JCxxxS-24/Ab, JCxxxF-24/Ab
JCxxxM-24/Ab-b, JCxxxM-24/Abv-b, JCxxxS-24/Ab-b, JCxxxF-24/Ab-b with 50mm frame
height.

JCxxxM-24/Bb, JCxxxM-24/Bbv, JCxxxS-24/Bb, JCxxxF-24/Bb, JCxxxM-24/Bb-b
JCxxxM-24/Bbv-b, JCxxxS-24/Bb-b, JCxxxF-24/Bb-b, JCxxxM-24/Bbh, JCxxxS-24/Bbh
JCxxxF-24/Bbh, JCxxxM-24/Bbh-b, JCxxxS-24/Bbh-b, JCxxxF-24/Bbh-b with 40mm frame
height.

JCxxxS-24/Db, JCxxxF-24/Db, JCxxxS-24/Db-b, JCxxxF-24/Db-b with 35mm frame height.
Where xxx refers to the module power rating.

Sunpower Modules- Black or Silver Frames

Models:

SPR-E-xx series with standard (G3) or InvisiMount (G5) 46 mm frame
SPR-X-xx series with standard (G3) or InvisiMount (G5) 46 mm frame.
where xx is the series number

Panasonic Modules – Black or Silver Frames

Models:

VBHNxxxSA06, VBHNxxxSA06B, VBHNxxxSA11, VBHNxxxSA11B with 35 mm frame height.
Where xxx refers to the module power rating

Winaico Modules - Black or Silver Frames

Models:

Winaico 60 Cell modules with 35 and 40 mm frames
Wsy-xxxz6
Where "y" can be either P or T, "xxx" is the module power rating, and "z" can be either M or P

Mitsubishi Modules - Black or Silver Frames

Models:

PV-MYYxxxZZ
Where YY can be LE or JE, xxx is the module power rating, and ZZ can be either HD, HD2, or
FB

Jinko Solar Modules - Silver Frames

Models:

JKMxxxP-60: Where xxx is the module power rating between 250-270 in increments of 5.
JKMSxxxP: Where xxx is the module power rating between 255-270 in increments of 5.
JKMxxxPP-60: Where xxx is the module power rating between 255-270 in increments of 5.

Test Verification of Conformity

In the basis of the tests undertaken, the sample(s) of the below product have been found to comply with the requirements of the referenced specifications at the time the tests were carried out.

Applicant Name & Address:	IronRidge, Inc. 1495 Zephyr Ave. Hayward, CA 94544 USA
Product Description:	Flush Mount System with XR Rails.
Ratings & Principle Characteristics:	<u>Fire Class Resistance Rating:</u> -Flush Mount (Symmetrical). Class A Fire Rated for Low Slope applications when using Type 1, 2 and 3, listed photovoltaic modules. Class A Fire Rated for Steep Slope applications with Type1, 2 and 3, listed photovoltaic modules. Tested with a 5" gap (distance between the bottom the module frame and the roof covering), per the standard this system can be installed at any gap allowed by the manufacturers installation instructions. No perimeter guarding is required. This rating is applicable with any IronRidge or 3'rd party roof anchor.
Models:	IronRidge Flush Mount with XR Rails
Brand Name:	IronRidge Flush Mount
Relevant Standards:	UL 2703 (Section 15.2 and 15.3) Standard for Safety Mounting Systems, Mounting Devices, Clamping/Retention Devices, and Ground Lugs for Use with Flat-Plate Photovoltaic Modules and Panels, First Edition dated Jan. 28, 2015 Referencing UL1703 Third Edition dated Nov. 18, 2014, (Section 31.2) Standard for Safety for Flat-Plate Photovoltaic Modules and Panels.
Verification Issuing Office:	Intertek Testing Services NA, Inc. 8431 Murphy Drive Middleton, WI 53562
Date of Tests:	08/27/2014 to 03/17/2015
Test Report Number(s):	101769343MID-001r1, 101769343MID-001a, 101915978MID-001 & 101999492MID-001ar1-cr1.

This verification is part of the full test report(s) and should be read in conjunction with them. This report does not automatically imply product certification.

Completed by: Chris Zimbrich
Title: Technician II, Fire Resistance

Signature:

Date: 05/25/2016



Reviewed by: Chad Naggs
Title: Technician I, Fire Resistance

Signature:

Date: 05/25/2016



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Starling Madison Lofquist, Inc.
Consulting Structural and Forensic Engineers

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IronRidge
1495 Zephyr Ave
Hayward, CA 94544

December 18, 2014
page 1 of 11

Attn: Mr. David F. Taggart, Vice President Products

Subject: IronRidge FlashFoot

Dear Sir:

This letter is a supplement to the standard letter for the IronRidge Roof Flush Mounting System to address the requirements for use with the IronRidge FlashFoot.

The IronRidge FlashFoot comprises an aluminum block and flashing plate. An L-Foot base is attached using a 5/16" lag screw with a 3 inch minimum embedment into a wood substrate. The wood substrate for the tests consisted of 1/2" CDX plywood over a 2x6 SPF #2 rafter with a specific gravity of 0.42. A full detail can be seen on the attached drawings.

The testing data provided shows that the critical failure occurs in one of two ways, pullout of the lag screw from the base material or the shear failure of the L-Foot. Maximum allowable values for these failure conditions were derived using a safety factor of 3.0 on the lowest ultimate load provided by the testing. The maximum allowable uplift reaction of 717 lbs and the maximum allowable downslope (lateral) reaction of 341 lbs are based on the tested criteria.

The allowable loads used to develop the tables below have been increased from the tested values above to reflect installation into a wood substrate with specific gravity of 0.50. The increase was determined using the ANSI/AF&PA NDS-2010 National Design Specification (NDS) for Wood Construction adjustment factor of $1 / 1 - (0.50 - G)$ where G is the tested specific gravity. Therefore, the maximum allowable uplift reaction is 779 lbs and the maximum allowable downslope (lateral) reaction is 370 lbs. The maximum allowable spacing of the FlashFoot for common load cases due to wind and snow are shown in Tables 1-9 below.

Table 1 - MAXIMUM SPANS (inches) - Wind Zone 1											
XR10 Rail Flash Foot	Wind Speed	Ground Snow Load									
Exposure	mph	0 psf	10 psf	20 psf	30 psf	40 psf	50 psf	60 psf	70 psf	80 psf	90 psf
Category B	100	70	61	51	45	40	36	33	30	29	27
	105	70	61	51	45	40	36	33	30	29	27
	110	70	61	51	45	40	36	33	30	29	27
	120	70	61	51	45	40	36	33	30	29	27
	130	70	61	51	45	40	36	33	30	29	27
	140	66	61	51	45	40	36	33	30	29	27
	150	62	60	51	45	40	36	33	30	29	27
	160	58	58	50	45	40	36	33	30	29	27
Category C	170	55	55	49	44	40	36	33	30	29	27
	100	70	61	51	45	40	36	33	30	29	27
	105	70	61	51	45	40	36	33	30	29	27
	110	70	61	51	45	40	36	33	30	29	27
	120	65	61	51	45	40	36	33	30	29	27
	130	60	59	51	45	40	36	33	30	29	27
	140	56	56	49	44	40	36	33	30	29	27
	150	53	53	48	43	39	36	33	30	29	27
Category D	160	49	49	47	43	39	36	33	30	29	27
	170	46	46	46	42	38	35	33	30	29	27
	100	70	61	51	45	40	36	33	30	29	27
	105	68	61	51	45	40	36	33	30	29	27
	110	65	61	51	45	40	36	33	30	29	27
	120	60	59	50	45	40	36	33	30	29	27
	130	56	56	49	44	40	36	33	30	29	27
	140	52	52	48	43	39	36	33	30	29	27
Category D	150	48	48	47	42	39	36	33	30	29	27
	160	45	45	45	41	38	35	33	30	29	27
	170	43	43	43	40	37	35	33	30	29	27

Notes – see page 11

Table 2 - MAXIMUM SPANS (inches) - Wind Zone 2											
XR10 Rail Flash Foot	Wind Speed	Ground Snow Load									
Exposure	mph	0 psf	10 psf	20 psf	30 psf	40 psf	50 psf	60 psf	70 psf	80 psf	90 psf
Category B	100	67	61	51	45	40	36	33	30	29	27
	105	64	61	51	45	40	36	33	30	29	27
	110	61	61	51	45	40	36	33	30	29	27
	120	56	56	51	45	40	36	33	30	29	27
	130	52	52	51	45	40	36	33	30	29	27
	140	49	49	49	45	40	36	33	30	29	27
	150	45	45	45	45	40	36	33	30	29	27
	160	43	43	43	43	40	36	33	30	29	27
	170	40	40	40	40	40	36	33	30	29	27
Category C	100	57	57	51	45	40	36	33	30	29	27
	105	55	55	51	45	40	36	33	30	29	27
	110	52	52	51	45	40	36	33	30	29	27
	120	48	48	48	45	40	36	33	30	29	27
	130	44	44	44	44	40	36	33	30	29	27
	140	41	41	41	41	40	36	33	30	29	27
	150	38	38	38	38	38	36	33	30	29	27
	160	36	36	36	36	36	36	33	30	29	27
	170	34	34	34	34	34	34	33	30	29	27
Category D	100	53	53	51	45	40	36	33	30	29	27
	105	50	50	50	45	40	36	33	30	29	27
	110	48	48	48	45	40	36	33	30	29	27
	120	44	44	44	44	40	36	33	30	29	27
	130	41	41	41	41	40	36	33	30	29	27
	140	38	38	38	38	38	36	33	30	29	27
	150	35	35	35	35	35	35	33	30	29	27
	160	33	33	33	33	33	33	33	30	29	27
	170	31	31	31	31	31	31	31	30	29	27

Notes – see page 11

Table 3 - MAXIMUM SPANS (inches) - Wind Zone 3											
XR10 Rail Flash Foot	Wind Speed	Ground Snow Load									
Exposure	mph	0 psf	10 psf	20 psf	30 psf	40 psf	50 psf	60 psf	70 psf	80 psf	90 psf
Category B	100	55	55	51	45	40	36	33	30	29	27
	105	52	52	51	45	40	36	33	30	29	27
	110	50	50	50	45	40	36	33	30	29	27
	120	46	46	46	45	40	36	33	30	29	27
	130	42	42	42	42	40	36	33	30	29	27
	140	39	39	39	39	39	36	33	30	29	27
	150	37	37	37	37	37	36	33	30	29	27
	160	34	34	34	34	34	34	33	30	29	27
	170	32	32	32	32	32	32	32	30	29	27
Category C	100	46	46	46	45	40	36	33	30	29	27
	105	44	44	44	44	40	36	33	30	29	27
	110	42	42	42	42	40	36	33	30	29	27
	120	39	39	39	39	39	36	33	30	29	27
	130	36	36	36	36	36	36	33	30	29	27
	140	33	33	33	33	33	33	33	30	29	27
	150	31	31	31	31	31	31	31	30	29	27
	160	29	29	29	29	29	29	29	29	29	27
	170	27	27	27	27	27	27	27	27	27	27
Category D	100	43	43	43	43	40	36	33	30	29	27
	105	41	41	41	41	40	36	33	30	29	27
	110	39	39	39	39	39	36	33	30	29	27
	120	36	36	36	36	36	36	33	30	29	27
	130	33	33	33	33	33	33	33	30	29	27
	140	31	31	31	31	31	31	31	30	29	27
	150	28	28	28	28	28	28	28	28	28	27
	160	27	27	27	27	27	27	27	27	27	27
	170	25	25	25	25	25	25	25	25	25	25

Notes – see page 11

Notes – Tabulated values are based on the following criteria:

1. Building mean roof height = 30 ft
2. Risk Category = I
3. Roof Slope = 7 to 27 degrees
4. Solar panel long dimension = 78.5 in
5. Minimum specific gravity of wood rafter = 0.50
6. ASCE 7-10

Our analysis assumes that the connections and associated hardware are installed in a workmanlike manner in accordance with the “IronRidge Roof Mount Installation Manual” by IronRidge and generally accepted standards of construction practice. It is the responsibility of the contractor to verify that the quality of the roof framing meets the minimum properties used in the tests. Additional information is available at the IronRidge web site, IronRidge.com.

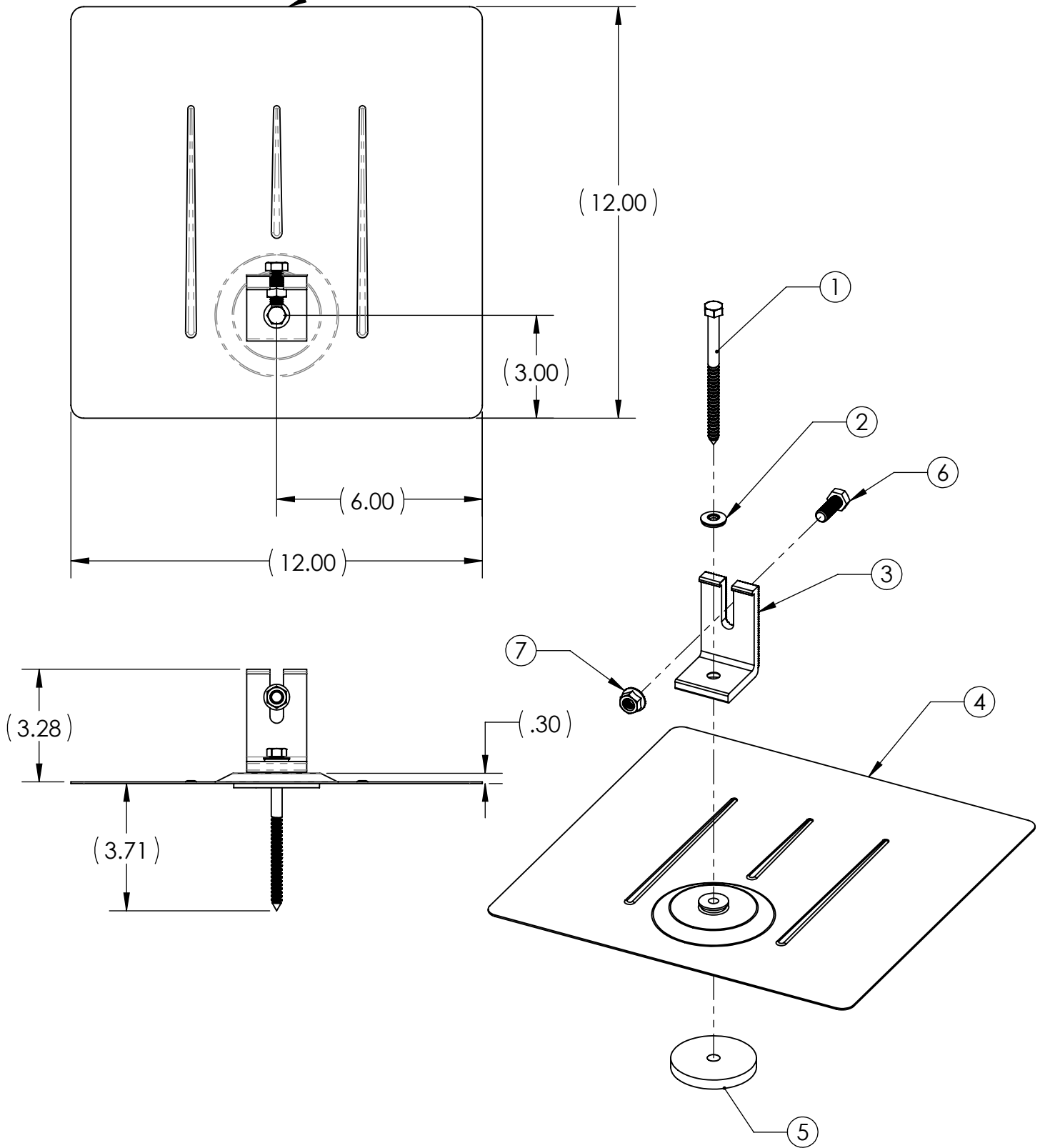
Please feel free to contact me at your convenience if you have any questions.


Respectfully yours,



Tres J. Warner, P.E.
Design Division Manager

THIS EDGE TOWARDS ROOF RIDGE



ITEM NO.	DESCRIPTION	QTY	DRAWN	SO	11-19-2013	 IRONRIDGE		
1	LAG BOLT 5/16"- 4 1/2" 18.8 SS	1	CHECKED	SM	11-26-2013			
2	5/16" EPDM BONDED WASHER 18.8 SS	1	ENG APPR.	JA	11-16-2013			
3	SCL-101-3	1	MFG APPR.	--	--			
4	IR-GF-FLASHING	1	Q.A.	--	--	<div>KIT, IRONRIDGE FLASH FOOT (L-FOOT INCLUDED)</div> <div><div>SIZE A</div><div>PART NO. RF-FLSH-001</div><div>SCALE:1:4</div><div>WEIGHT:</div><div>REV. --</div><div>SHEET 1 OF 1</div></div>		
5	IR-GF-SUPPORT	1	COMMENTS: DO NOT SCALE DRAWING					
6	BOLT, 3/8-16 X 1" HEX CS SS	1						
7	NUT, FLANGE HEX 3/8-16 SS	1						



Main

Commercial Status	Commercialised
Product or component type	Single Throw Safety Switch
[In] rated current	60 A
Product certifications	UL listed
NEMA degree of protection	NEMA 3R
Disconnecter device type	Fusible disconnect
Device composition	Neutral (factory installed)
Short-circuit current	100 kA maximum depending on fuse H, K or R
Device mounting	Surface
Number of poles	2
Electrical connection	Lugs
Series name	General duty

Ordering and shipping details

Category	00106 - D & DU SW,NEMA3R, 30-200A
Discount Schedule	DE1A
GTIN	00785901460640
Nbr. of units in pkg.	1
Package weight(Lbs)	8.35
Product availability	Stock - Normally stocked in distribution facility
Returnability	Y
Country of origin	US

Contractual warranty

Period	18 months
--------	-----------

SQUARE D HOMELINE SOLAR-READY COMBINATION SERVICE ENTRANCE DEVICES FOR PLUG-ON NEUTRAL CIRCUIT BREAKERS



Engineered for value, Homeline™ Solar-ready CSEDs offer time savings for Plug-on Neutral Combination Arc Fault (CAFI) and Dual Function Circuit Breaker installation. Our innovative, split neutrals are engineered to save you time and wire, allowing Plug-on Neutral Circuit Breakers to connect directly to the neutral bar without the pigtail. Coupled with the state-of-the-art design, our neutral bars are now fully distributed, accepting Plug-on Neutral Circuit Breakers on any space.



Improve troubleshooting!

All Square D™ CAFI and Dual Function Circuit Breakers feature TIME SAVER Diagnostics, which provide circuit information at the touch of a button.

The Homeline Plug-on Neutral Advantage

- **Faster installation** — Fewer connections
- **Saves wire** — Fully distributed split neutral bar* with backed-out neutral screws
- **Frees gutter space** — No pigtails
- **Easier troubleshooting** — TIME SAVER Diagnostics provide additional circuit information at the touch of a button

**Patent applied*

HOMELINE SOLAR-READY COMBINATION SERVICE ENTRANCE DEVICES FOR PLUG-ON NEUTRAL CIRCUIT BREAKERS OFFER

- Solar-ready**
Suitable for use with Photovoltaic (PV) system applications as defined in NEC® Article 690.64
 - PV system data monitoring**
Provisions for current transformers (CT) on the line side of the service disconnect
 - Line side solar tap**
Accommodates field-installable lug kit ahead of the service disconnect to feed PV system without using a branch breaker space or de-rating the main breaker

See the difference!



▲ Pigtail Neutral connection

- **Less wiring**
- **Clean gutter**
- **Fast installation**



▲ Plug-on Neutral connection

Existing Catalog Number	New Catalog Number	Main Breaker	Branch Spaces/ Circuits	Accepts Line Side CTs	Accepts Line Side Solar Tap*	Dimensions		
						Length	Width	Depth
Surface Mount Only								
SC816F150S	SC816F150PS	150 A	8/16	Yes	Yes	29.50	21.50	5.80
SC816F200S	SC816F200PS	200 A						
SC2040M200S	SC2040M200PS		30/42			37.30	21.50	5.80
SC3040M200S	SC3042M200PS		42/42					
SC40M200S	SC42M200PS							

*Order Solar-ready sub-feed lug kit SR69064A

With exclusive features including cutting-edge circuit protection and TIME SAVER Diagnostics, Homeline CSEDs are the smart choice for value-minded contractors, remodelers, builders, and homeowners. Whatever your requirements are, Square D has a solution to meet your needs. For more information, call **888-SQUARED (888-778-2733)** or visit your local Square D authorized distributor.

Schneider Electric USA, Inc.
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Andover, MA 01844
Tel: 847-397-2600
Fax: 847-925-7500
www.schneider-electric.com/us

SR69064A Terminal Kit for Solar Ready Combination Service Entrance Device (CSED)**Kit de terminales SR69064A para base integral de medición para acometida (CSED) de energía solar**

Class Clase	Series Serie
4120	M01

Retain for future use. / Conservar para uso futuro.

Kit Contents

- 2 Sub-feed phase terminals
- 1 Sub-feed neutral terminal
- 2 Interactive inverter labels

Contenido del accesorio

- 2 Terminales de fase de subalimentación
- 1 Terminal de neutro de subalimentación
- 2 Etiquetas de inversor interactivas

Precautions**Precauciones****⚠ DANGER / PELIGRO****HAZARD OF ELECTRIC SHOCK, EXPLOSION, OR ARC FLASH**

- Apply appropriate personal protective equipment (PPE) and follow safe electrical work practices. See NFPA 70E and NOM-029-STPS.
- This equipment must only be installed and serviced by qualified electrical personnel.
- Turn off all power supplying this equipment before working on or inside equipment.
- Always use a properly rated voltage sensing device to confirm power is off.
- Replace all devices, doors and covers before turning on power to this equipment.

Failure to follow these instructions will result in death or serious injury.**PELIGRO DE DESCARGA ELÉCTRICA, EXPLOSIÓN O DESTELLO POR ARQUEO**

- Utilice equipo de protección personal (EPP) apropiado y siga las prácticas de seguridad eléctrica establecidas por su Compañía, consulte la norma 70E de NFPA y NOM-029-STPS.
- Solamente el personal eléctrico especializado deberá instalar y prestar servicio de mantenimiento a este equipo.
- Desenergice el equipo antes de realizar cualquier trabajo en él.
- Siempre utilice un dispositivo detector de tensión nominal adecuado para confirmar la desenergización del equipo.
- Vuelva a colocar todos los dispositivos, las puertas y las cubiertas antes de volver a energizar el equipo.

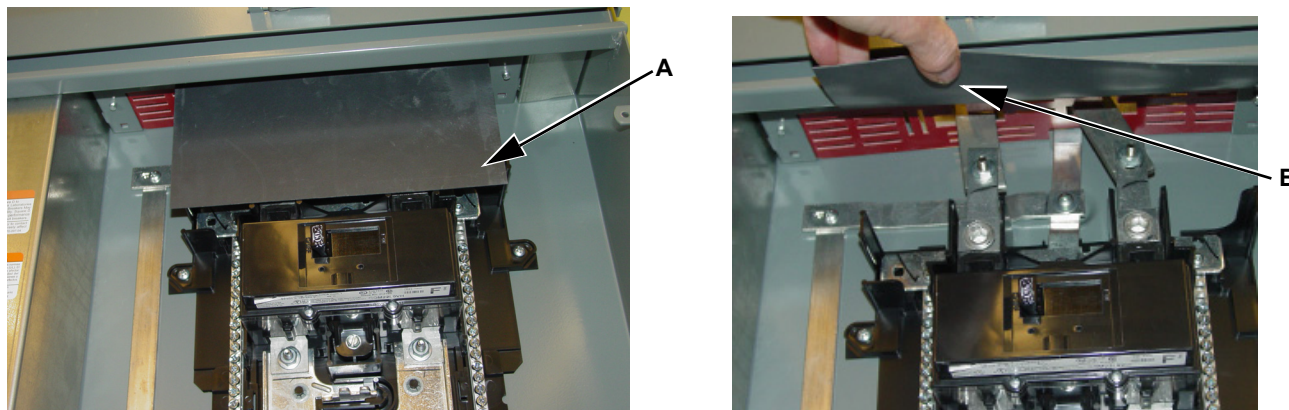
El incumplimiento de estas instrucciones podrá causar la muerte o lesiones serias.**Installation**

1. Turn off all power supplying this equipment before working on or inside equipment.
2. Remove the deadfront. An insulating barrier is installed to isolate the line bus bars from the deadfront. See Figure 1, A.
3. Lift barrier to locate studs to attach the feed through terminals. See Figure 1, B.

Instalación

1. Desenergice el equipo antes de realizar cualquier trabajo dentro o fuera de él.
2. Desmonte el frente muerto. Una barrera aislante ha sido instalada para aislar las barras de línea del frente muerto. Vea la figura 1, A.
3. Levante la barrera para localizar los pernos para colocar las terminales de paso. Vea la figura 1, B.

Figure / Figura 1: Removing Deadfront / Desmontaje del frente muerto



4. Using a 7/16 in. socket, remove Keps™ nuts (A) from both circuit breaker connectors (B). See Figure 2.

Installing Current Transformers (CTs) on Bus Bars

- Maximum external dimensions for CTs: 3 in. diameter (or height) x 1 in. depth.
- Minimum window opening: 1 in. diameter (or width).

1. If CTs are to be installed on the line side of the main circuit breaker, use 3/8 in. hex (Allen® driver) to loosen the wire binding screws (C) and remove the circuit breaker connectors (B) from the main circuit breaker terminals. See Figure 2.

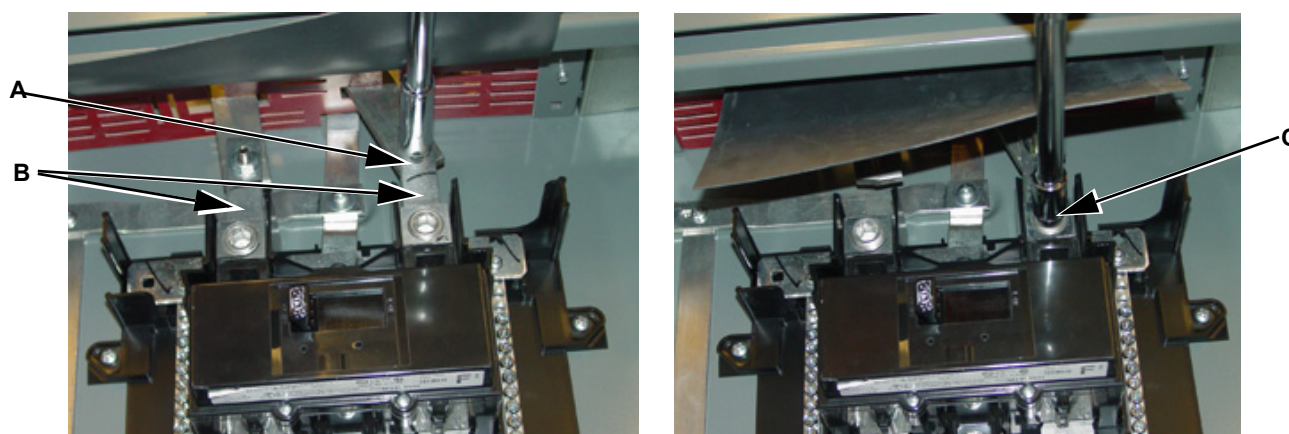
4. Con una llave de cubo de 7/16 pulgada, retire las tuercas de seguridad Keps™ (A) de ambos conectores (B) en el interruptor automático. Vea la figura 2.

Instalación de los transformadores de corriente (TC) en las barras

- Dimensiones máximas externas para los TC: 76 mm (3 pulg) de diámetro (o altura) x 25 mm (1 pulg) de profundidad.
- Abertura mínima de la ventana: 25 mm (1 pulg) de diámetro (o ancho).

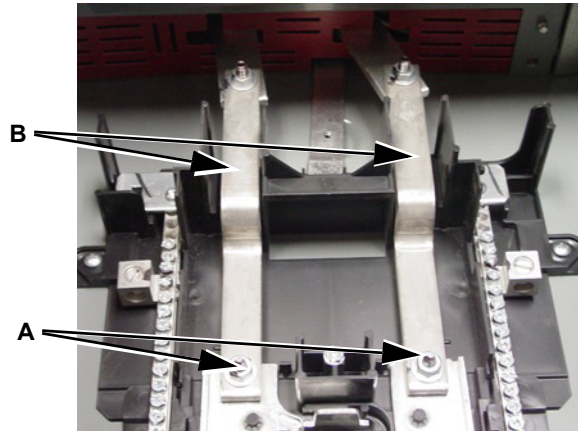
1. Si se van a instalar los TC en el lado de la línea del interruptor automático principal, utilice una punta de destornillador (Allen®) hexagonal de 3/8 pulg para aflojar los tornillos de sujeción del cable (C) y quitar los conectores (B) de las terminales del interruptor automático principal. Vea la figura 2.

Figure / Figura 2: Keps Nuts Removal / Extracción de las tuercas de seguridad



- | | |
|--|---|
| <p>2. If CTs are to be installed on the line side of a twelve-circuit main terminal device, use 7/16 in. socket to remove the Keps nuts (A) and remove the bus connectors (B). See Figure 3.</p> | <p>2. Si los TC deben instalarse en el lado de línea de un dispositivo de terminales principal de doce circuitos, utilice una llave de cubo de 7/16 pulgada para quitar las tuercas de seguridad Keps (A) y quitar los conectores (B) de la barra. Vea la figura 3.</p> |
|--|---|

Figure / Figura 3: Keps Nuts Removal from Main Terminal Device / Desmontaje de las tuercas de seguridad Keps del dispositivo de terminales principal



- | | |
|--|--|
| <p>3. Install CTs around connectors and re-install connectors. Torque wire binding screws to 250 lb-in. (28 N•m) for main circuit breaker, or torque Keps nuts to 75 lb-in. (8.5 N•m) for twelve-circuit main terminal device. See Figure 4.</p> | <p>3. Instale los TC alrededor de los conectores y vuelva a instalar estos últimos. Apriete los tornillos de sujeción del cable en 28 N•m (250 lbs-pulg) para el interruptor principal, o apriete las tuercas de seguridad Keps en 8,5 N•m (75 lbs-pulg) para el dispositivo de terminales principal de doce circuitos. Vea la figura 4.</p> |
|--|--|

Figure / Figura 4: Install Current Transformers / Instalación de los transformadores de corriente



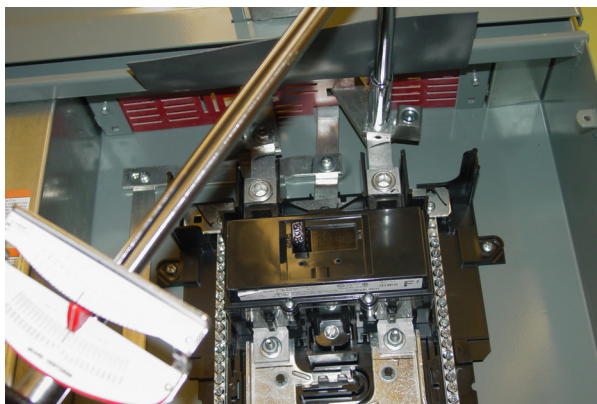
Sub-Feed Terminal Assembly Installation

1. Attach sub-feed terminals to bus bars with Keps nuts previously removed. Torque Keps nuts to 75 lb-in. (8.5 N•m). See Figure 5.

Instalación del ensamble de terminales de sub-alimentación

1. Instale las zapatas de sub-alimentación en las barras empleando las tuercas de seguridad que retiró anteriormente. Apriete las tuercas de seguridad en 8,5 N•m (75 lbs-pulg). Vea la figura 5.

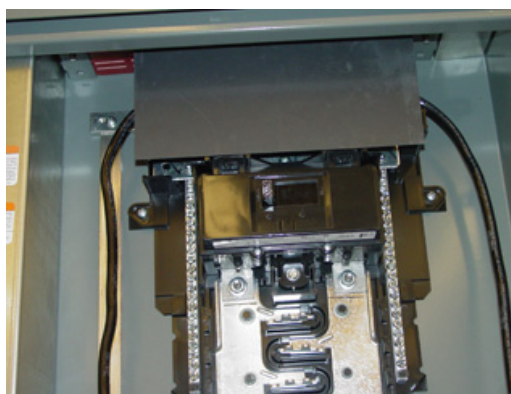
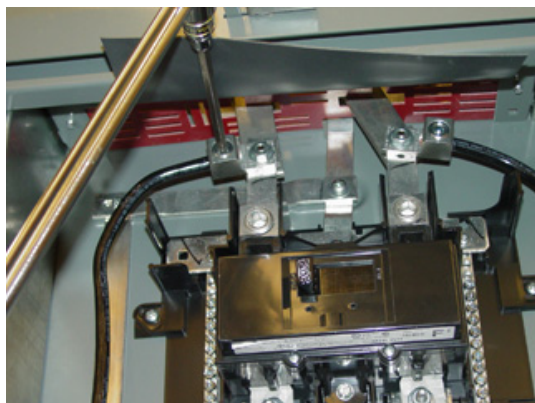
Figure / Figura 5: Sub-Feed Terminal Assembly / Ensamble de terminales de sub-alimentación



2. Install wires in sub-feed terminals. Using a 1/4 in. hex (Allen driver) and torque wrench, tighten wire binding screws. Torque to 200 lb-in. (23 N•m). See Figure 6.

2. Empleando una llave de apriete prefijado y cubo hexagonal de 1/4 pulg, apriete los tornillos de sujeción de cables. Apriételes en 23 N•m (200 lbs-pulg). Vea la figura 6.

Figure / Figura 6: Installing Wires / Instalación de cables



Alternate Neutral Terminal (If Required)

If an alternate neutral terminal is required, install neutral terminal per instructions included with the lug. An alternate neutral lug (LK100AN) with a wire range of #6-2/0 AWG is provided with this kit.

Electrical equipment should be installed, operated, serviced, and maintained only by qualified personnel. No responsibility is assumed by Schneider Electric for any consequences arising out of the use of this material.

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Schneider Electric USA, Inc.
1601 Mercer Road
Lexington, KY 40511 USA
1-888-SquareD (1-888-778-2733)
www.schneider-electric.us

Terminale de neutro alternativa (si es necesaria)

Si es necesaria una terminales de neutro alternativa, instale la terminale de neutro según las instrucciones incluidas con la terminale. Este kit incluye una terminale de neutro alternativa (LK100AN) de tamaño 13,3 - 67,4 mm² (6-2/0 AWG).

Solamente el personal especializado deberá instalar, hacer funcionar y prestar servicios de mantenimiento al equipo eléctrico. Schneider Electric no asume responsabilidad alguna por las consecuencias emergentes de la utilización de este material.

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Tel. 55-5804-5000
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Meter Mains and All-In-Ones

- Ringless Meter Sockets with barrel lock provisions factory installed except for Cat. No. SO2040M200SS which is a Ring Style meter socket with no provisions for barrel lock to secure the meter cover
- UL Listed, suitable only for use as service equipment
- Service disconnect(s) are supplied factory-installed, except where noted
- Supplied with 100% branch neutrals, all unused terminals may be used for equipment grounding wires
- Meets Federal Specification W-P-115c as Type 1, Class 2
- All devices have a 3" KO in the bottom endwall
- Provisions for Field Installed CTs All Devices
- Solar Ready kit SR69064A fits All Devices Below, order from Table 1.66

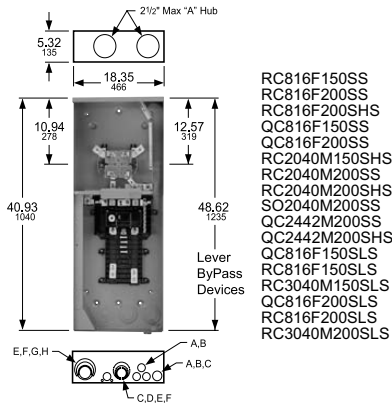
Table 1.66: All-In-One Combination Service Entrance Devices

	Ampere Rating	Bypass Type	Service Type	Short Circuit Current Rating	Cat. No.	Service Disconnect(s)			Load Center and Branch Circuit Breakers (Order Separately [1])				Hub Type (Order Separately [2])	Line Side Main Lugs AWG/ kcmil (Al/Cu)	Service Ground Lug AWG/ kcmil (Al/Cu)
									Max. Quantity			Ampere Rating Max.			
						2P Circuits (Max.)	Type (Factory Installed except where noted)	Ampere Rating	1P						
									Spaces	Circuits	Tan-dems				
Meter Mains[3]															
QO	Surface Mount Only														
	Surface Mount—Supplied with Feed-Thru Lugs and Provisions for Branch Circuit Breakers														
	150 A	None	OH/UG	22 kA	QC816F150SS [4] [5]	1	QOM2150VH	150 A	8	16	8	150 A	A	350	8–2/0
		Lever	OH/UG	22 kA	QC816F150SLS [4] [6]	1	QOM2150VH	150 A	8	16	8	150 A			
	200 A	None	OH/UG	22 kA	QC816F200SS [4] [5]	1	QOM2200VH	200 A	8	16	8	200 A			
Lever		OH/UG	22 kA	QC816F200SLS [4] [6]	1	QOM2200VH	200 A	8	16	8	200 A				
Homeline	Surface Mount—Supplied with Feed-Thru Lugs and provisions for Branch Circuit Breakers														
	150 A	None	OH/UG	22 kA	RC816F150SS [4] [5]	1	QOM2150VH	150 A	8	16	8	150 A	A	6-350	8–2/0
		Lever	OH/UG	22 kA	RC816F150SLS [4] [6]	1	QOM2150VH	150 A		16	8	150 A	A	6-350	8–2/0
	200 A	None	OH/UG	22 kA	RC816F200SS [4] [5]	1	QOM2200VH	200 A	8	16	8	200 A	A	6-350	8–2/0
		Horn	OH/UG	22 kA	RC816F200SHS [4] [7] [5]	1	QOM2200VH	200 A	8	16	8	200 A	A	6-350	8–2/0
		Lever	OH/UG	22 kA	RC816F200SLS [4] [6]	1	QOM2200VH	200 A		16	8	200 A	A	6-350	8–2/0
	All-in-One Combination Service Entrance Devices [3]														
QO	Surface Mount Only														
	200 A	None	OH/UG	22 kA	QC2442M200SS [5]	1	QOM2200VH	200 A	24	42	18	200 A	A	6-350	8–2/0
Homeline	150 A	Horn	OH/UG	22 kA	QC2442M200SHS [7] [5]	1	QOM2200VH	200 A	24	42	18	200 A	A	6-350	8–2/0
		Lever	OH/UG	22 kA	RC2040M150SHS [7] [5]	1	QOM2150VH	150 A	20	40	20	150 A	A	6-350	8–2/0
	200 A	Lever	OH/UG	22 kA	RC3040M150SLS [6]	1	QOM2150VH	150 A	30	40	10	150 A	A	6-350	8–2/0
		None	OH/UG	22 kA	RC2040M200SS [5]	1	QOM2200VH	200 A	20	40	20	200 A	A	6-350	8–2/0
		Horn	OH/UG	22 kA	RC2040M200SHS [7] [5]	1	QOM2200VH	200 A	20	40	20	200 A	A	6-350	8–2/0
		None	OH	22 kA	SO2040M200SS [5]	1	QOM2200VH	200 A	20	40	20	200 A	A	6-350	8–2/0
		Lever	OH/UG	22 kA	RC3040M200SLS [6]	1	QOM2200VH	200 A	30	40	10	200 A	A	6-350	8–2/0

* Kit is to be installed between meter socket and Main Disconnect. May be used with Solar PV, Wind, fuel generators, and other power generation sources up to 80% of Mains Rating Maximum 160 A.

Table 1.67: Knockouts

Symbol	A	B	C	D	E	F	G	H	I	J
Conduit Size (in.)	1/2	3/4	1	1-1/4	1-1/2	2	2-1/2	3	3-1/2	4



[1] To order load centers and branch circuit breakers, see QO Plug-On Circuit Breakers, page 1-2 and Homeline Plug-On Circuit Breakers, page 1-16

[2] See Bolt-On Hubs, page 1-22

[3] Solar Ready Kit Part Number SR69064A * (This Kit Fits All Solar Ready Devices)

[4] Supplied with load side feed-thru lugs, for 4AWG-250 kcmil Al/Cu conductors.

[5] Suitable for load wires to exit top endwall with addition of Tunnel Kit OHBS. See (see Table 1.64 Accessories, page 1-28, check with local utility for approval.

[6] Suitable for load wires to exit top endwall with addition of Tunnel Kit OHBL. See (see Table 1.64 Accessories, page 1-28, check with local utility for approval.

[7] Device supplied with horn bypass and 5th jaw factory installed

Homeline Solar Ready PoN CSEDs

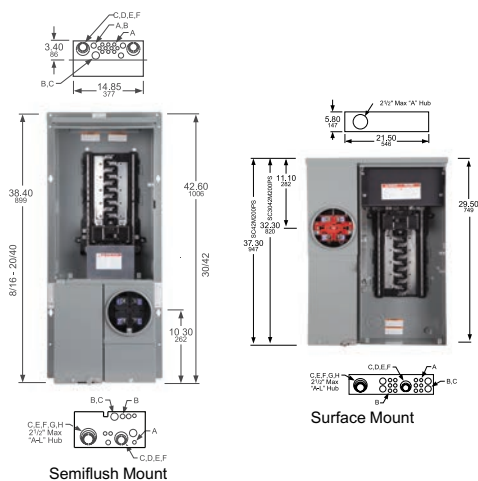
- Ring-type Meter Sockets
- UL Listed, suitable only for use as service equipment
- Service disconnect(s) are supplied factory-installed, except where noted
- Interiors accept plug-on neutral and pigtail style branch circuit breakers
- Supplied with a fully distributed neutral bar, all unused terminals may be used for equipment grounding wires
- Meets Federal Specification W-P-115c as Type 1, Class 2
- Solar Ready kit SR69064A fits all devices below
- All devices have a 3" KO in the bottom endwall
- Provisions for field installed CTs on All devices
- Meets EUSERC requirements

Table 1.68: All-In-One Combination Service Entrance Devices

Main Breaker	Bus Bar Ampere Rating	Bypass Type	Service Type	Short Circuit Current Rating	Cat. No. [1]	Service Disconnect(s)		Load Center and Branch Circuit Breakers (Order Separately Pages 1-2, 1-3, 1-4)				Hub Type (Order Separately [2])	Line Side Main Lugs AWG/ kcmil (Al/Cu)	Service Ground Lug AWG/ kcmil (Al/Cu)
								Max. Quantity			Ampere Rating Max.			
						2P Circuits (Max.)	Type (Factory Installed except where noted)	Spaces	1P					
									Circuits	Tandems				
Semiflush Mount Only														
200 A	225 A	None	OH[3]/UG	22 kA	SC816F200PF [4]	1	QOM2200VH	8	16	8	200 A	A-L	4-250	8-2/0
125 A		None	OH[3]/UG	22 kA	SC2040M125PF	1	QOM2125VH	20	40	20	110 A			
200 A		None	OH[3]/UG	22 kA	SC2040M200PF	1	QOM2200VH	20	40	20	200 A			
		None	OH[5]/UG	22 kA	SC3042M200PF	1	QOM2200VH	30	42	12	200 A			
225 A		None	OH[5]/UG	22 kA	SC3042M225PF	1	QOM2225VH	30	42	12	200 A			
Surface Mount Only														
150 A	200 A	None	OH/UG	22 kA	SC816F150PS [4]	1	QOM2150VH	8	16	8	150 A	A-L	4-250	8-2/0
		None	OH/UG	22 kA	SC816F200PS [4]	1	QOM2200VH	8	16	8	200 A			
		None	OH/UG	22 kA	SC2040M200PS	1	QOM2200VH	20	40	20	200 A			
		None	OH/UG	22 kA	SC3042M200PS	1	QOM2200VH	30	42	12	200 A			
		None	OH/UG	22 kA	SC42M200PS	1	QOM2200VH	42	42	0	200 A			

Table 1.69: Knockouts

Symbol	A	B	C	D	E	F	G	H	I	J
Conduit Size (in.)	1/2	3/4	1	1-1/4	1-1/2	2	2-1/2	3	3-1/2	4



[1] Accepts Solar Ready Kit Part Number SR69064A. Check with local utility for approval and order separately.
 [2] See Bolt-On Hubs, page 1-22
 [3] Suitable for OH service with addition of tunnel kit (SCTKP20). Check with local utility for approval and order separately.
 [4] Supplied with load side feed-thru lugs, for 4AWG-250 kcmil Al/Cu conductors.
 [5] Suitable for OH service with addition of tunnel kit (SCTKP30). Check with local utility for approval and order separately.



**MILPITAS FIRE DEPARTMENT
FIRE PREVENTION DIVISION**

455 E. Calaveras Blvd., Milpitas, CA 95035 (408) 586-3365, FAX (408) 586-3378

MEMORANDUM

DATE: June 12, 2017

TO: Adrienne Smith, Assistant Planner

FROM: Jaime Garcia, Fire Protection Engineer

Cc: Albert Zamora, Deputy Fire Chief

SUBJECT: NEW SOLAR CANOPY/CARPORT
430 EVANS RD
P-SD17-0009
(PJ #: xxxx)

The plans for the aforementioned project have been returned to the Planning Division. The Fire Department has the following comments (based on the 2017 California Codes):

Fire has the following notes.

Fire apparatus access. There shall be a min. of 20' clearance between the new structure and any existing structure. CA Fire Code Section 503.2.1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING
RESOLUTION 1626, THE CLASSIFICATION PLAN**

WHEREAS, the City of Milpitas has a Classification Plan adopted as Resolution No. 1626 on December 17, 1968, which has been amended from time to time, and which is in accordance with the Personnel Rules and Regulations of the City of Milpitas (Resolution No. 792 as amended); and

WHEREAS, amendments to the Classification Plan are necessary to account for changes within the organization, transfer of duties, new job responsibilities, and adjustments to salary ranges.

NOW THEREFORE, the City Council of the City of Milpitas hereby finds, determines and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Resolution No. 1626, as amended, is hereby further amended to:
 - A. Re-assign the classification titled "Police Support Services Manager" from the MidCon Bargaining Unit to the Unrepresented Employees group.
 - B. Adjust the salary range for the "Police Support Services Manager" classification to \$112,500 - \$ 157,500.
 - C. Approve and adopt the job description for the classification of "Police Support Services Manager" as provided in **Exhibit A**, attached hereto.

Passed and adopted this _____, day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT A



POLICE SUPPORT SERVICES MANAGER

City of Milpitas

Effective: 9/15/2017
Revised:
EEOC: Administrators
FLSA: Exempt
Unit: Unrepresented

DEFINITION

The Police Support Services Manager is a civilian managerial position that acts as manager over the Police Department's Communication Center and Records Unit. This manager receives direction from a Police Captain and is responsible for administrative work and supervision related to the assigned work groups. This manager will be responsible for developing policy and managing technical projects. The Support Services Manager must be capable of evaluating operational efficiency and implementing improvements timely.

DISTINGUISHING CHARACTERISTICS

The Police Support Services Manager is responsible for managing the Police Department's Communication Center and the Police Department's Records Unit. The incumbent may be required, on occasion, to work nights and weekends and must be willing to adjust his or her schedule, as needed.

The Communications Center is a primary Public Safety Answering Point (PSAP) that is also responsible for dispatching police, public works, and fire personnel. The PSAP receives 9-1-1 and business phone calls for the City of Milpitas and operates on a 24-hour, 7 day a week basis.

The Records Unit operates Monday through Friday and is responsible for processing police reports and warrants, preparing case files for the District Attorney's Office, preparing responses to Public Records Act (PRA) requests, and interacting with the public.

SUPERVISION RECEIVED AND EXERCISED

- Receives general direction from the Technical Services Division Captain or designee.
- Exercises supervision over Records Unit and Communication Center personnel.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

- Manages, directs, and organizes assignments of the Records Unit and Communication Center personnel.
- Formulates long-range plans related to personnel, technological improvements, and service delivery.
- Trains and evaluates personnel.

- Evaluates operational efficiency and implements improvements, when needed.
- Manages software and hardware upgrades in the assigned work groups.
- Prepares and monitors the Records Unit and Communication Center budget.
- Manages projects associated to the assigned work groups.
- Oversees and manages assigned contracts.
- Ensures compliance with Federal Communications Commission (FCC), Criminal Justice Information Control (CJIC), Department of Justice (DOJ), Criminal Justice Information Services (CJIS), California Law Enforcement Telecommunications System (CLETS), and National Crime Information Center (NCIC) policies and security regulations.
- Exercises sound decision-making and consideration when dealing with the public, colleagues, supervisors, and subordinates.
- Communicates effectively both orally and in writing.
- Performs related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Theory, techniques, principles and practices of emergency communications.
- Principles and procedures of record keeping.
- Law enforcement and fire service records management.
- Municipal budgeting practices.
- Principles of supervision, training, coaching, and performance evaluation.
- Leadership and personnel management.
- Public Safety Answering Point (PSAP) operations.
- Laws governing records retention and the California Public Records Act.
- Federal Communications Commission (FCC) and Department of Justice (DOJ) regulations.
- English usage, spelling, grammar, and punctuation.
- Pertinent federal, state, and local laws, codes, and regulations.

Ability to:

- Plan, direct, organize, coordinate, and manage the work of a complex public safety organization.
- Make decisions at a high-level and be able to respond to technical failures.
- Research and procure equipment related to a PSAP and a municipal record keeping work group.
- Prepare clear and concise written and oral reports.
- Establish and maintain effective working relationships with those contacted in the course of work.
- Work cooperatively with other departments, City officials, and outside agencies.
- Effectively represent the City to outside individuals and agencies to accomplish the goals and objectives of the unit.
- Communicate clearly both orally and in writing.

- Respond tactfully, clearly, concisely, and appropriately to inquiries from the public, City staff, or other agencies on sensitive issues in area of responsibility.
- Coordinate and direct activities of the emergency Communications Center and Records Unit.
- Plan, organize, and review the work of assigned personnel.
- Manage, lead, coach, and mentor personnel.
- Supervise, train, and evaluate assigned staff.
- Work various shifts including nights, weekends, and holidays, and be willing to adjust schedule, as needed.

EDUCATION AND EXPERIENCE

Education:

- A bachelor's degree from an accredited college or university with major coursework in criminal justice, emergency management, organizational leadership, or a closely related field.
- A master's degree is highly desirable.

Experience:

- Five years of experience working in a public safety agency.
- Three years of recent experience comparable to a supervisor, preferably in a PSAP.

CERTIFICATE

- Possession of a valid Class C California Driver's License.
- Possession of and ability to maintain a Basic Public Safety Dispatcher Certificate issued by the California Commission on Peace Officer Standards and Training (POST) is highly desirable.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment:

Work in a general office environment; sit and/or stand for long periods of time, repetitive keyboarding; reach, squat, lift, and carry up to 25 pounds; able to travel to various locations within and outside the City of Milpitas.

Approved by:

City Manager

Date

Human Resources Director

Date

**CITY OF MILPITAS
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of October 3rd, 2017 by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 ("City"), and RMC Water and Environment, Inc., a corporation with its principal place of business at 2290 N. First Street, Suite 212, San Jose, CA 95131-2017 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following projects:

Bay Area Rapid Transit Project (BART), Project No. CP4165 and Montage Expressway Widening Project, Project No. CP4179 (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$ 10,000.00. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a

statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder by December 31st, 2018. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under Exhibit "C" (Insurance Requirements), attached hereto and incorporated herein by this reference. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required therein.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the

City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the

work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Terri O'Connor as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: Steve Chan, Engineering

CONSULTANT:

RMC Water and Environment

2290 N. First Street, Suite 212

San Jose, CA 95131-2017

Attn: Mr. Marc Nakamoto

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee,

commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND RMC WATER AND ENVIRONMENT, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven Pangelinan
Acting City Manager

Date

Approved As To Form:

Christopher J. Diaz
City Attorney

RMC Water and Environment, Inc.

Signature

Name

Title

Date

EXHIBIT A

Scope of Services

The City of Milpitas desires Consultant support to assist with water system engineering services for the BART Extension Project (CP4265) and Montague Expressway Widening Project (CP4179). Consultant support services shall retroactively begin from January 1, 2017 through December 31, 2018.

Task 1 - Support Services

Consultant shall provide professional engineering support services for the BART and Montague Expressway Widening projects. Duties shall include:

- Review documents, such as plans, specifications, performance criteria, maps, submittals;
- Research maps and records;
- Water system modeling;
- Coordinate City responses on draft documents, such as plans, specifications, performance criteria, maps;
- Prepare documents, such as maps, charts, memos, meeting minutes;
- Track utility relocations;
- Review as-built plans;
- Manage documents; and
- Assist Milpitas staff as needed.

EXHIBIT B

Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detained progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

Estimated Level of Effort

Project	Principal (Hours)	Hourly Rate \$215	Sen. Engr (Hours)	Hourly Rate \$195	Proj Engr. (Hours)	Hourly Rate \$155	Total
CP#4179	1	\$215	16	\$3,120	10	\$1,550	\$4,885
CP#4265	1	\$215	16	\$3,120	10	\$1,550	\$4,885
							\$9,770

EXHIBIT C

Insurance Requirements

Please refer to the insurance requirements listed below. Those that have an “X” indicated in the space before the requirement apply to Contractor’s or Consultant’s Agreement.

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor’s or Consultant’s insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL):

- ___ Coverage at least as broad as Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ___ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability:

- ___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), of if Contractor or Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- ___ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
- ___ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Contractor or Consultant, regardless of where the vehicles are kept or driven.

Professional Liability (Errors and Omissions):

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

- ___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate
- ___ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
- ___ Insurance appropriate to the Contractor or Consultant's profession, with limit no less than _____ per occurrence or claim, _____ aggregate

Workers' Compensation Insurance:

- ___ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Contractor or Consultant makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor/Consultant Signature

Builder's Risk (Course of Construction):

- ___ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

Surety Bonds:

____ Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Contractor's or Consultant's Pollution Legal Liability:

____ Contractor's or Consultant's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Contractor or Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor or Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status:

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor or Consultant or any subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Contractor's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be

endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Primary Coverage:

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Contractor's or Consultant's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self insurance maintained by the City, its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Contractor's or Consultant's insurance and shall not contribute with it.

Builder's Risk (Course of Construction Insurance) (applicable to Construction Contracts only)

Contractor or Consultant may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage **shall name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Notice of Cancellation, Suspension or Otherwise Voiding Policies:

Each insurance policy required above shall contain, or be endorsed to contain **that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice** by certified mail, return receipt requested to the City.

Waiver of Subrogation:

Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions (“SIR”):

Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Completed Operations

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see below)

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor or Consultant must purchase “extended reporting” coverage for a minimum of **five (5) years** after completion of work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors:

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage:

Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply:

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

Applicability of Coverage:

Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

TOPIC	LEAD COUNCIL MEMBER	LEAD STAFF	GENERATED	STATUS/ACTION TO DATE	TARGET COMPLETION	ACTUAL COMPLETION	Follow up
LONG TERM							
City Council Handbook update		Chris Diaz	following swearing-in of new CC	revised version presented early in 2017 by City Attorney; no action	2018		Full, lengthy version needs update
Affordable Housing concerns		Brad Misner	Sunnyhills apts & other matters	meetings continue	2017-18		
Wage theft ordinance	Phan, Grilli	Chris Diaz and Edesa Bitbadal	2 Councilmembers, Oct 2017	Economic Development staff studying issue	fall 2017		
Report on Parking Issues City Wide		Steve Chan, City Engineer	request of Council, spring 2017		2017		Enforcement ?s
Reimbursement for mutual aid from County		Robert Mihovich	9/11/2017 CC mtg				
Plan for Milp. Police to patrol/serve at BART parking lots		Steve Pangelinan	9/11/2017 CC mtg				
Make-up of & method of appointment to City Commissions		Mary Lavelle	various requests of Council members	first scheduled for discussion 9/05/2017	10/03/2017		
SHORT TERM							
Censure policy	Nunez	Chris Diaz	Council request	Censure policy & reso discussed 10/05/2017. Final version due	11/07/2017		
Appointments to City Commissions	Mayor	Mary Lavelle	Jan - Oct 2017	Mayor needs to appt. members to 21 vacancies on Commissions & re-appoint those whose terms expired	fall 2017		
Report of Citizens Task Force on Water Rates		Nina Hawk	by prior Council, established in 2016	Final Task Force meeting held 9/12/2017	10/18/2017		
Stricter regulation of massage establishments	Mayor	Brad Misner	8/01/2017 CC mtg	Council voted for more regs.	2017-18		
Solar power purchasing - possible JPA		Edesa Bitbadal	spring 2017	Econ. Dev. staff to present Community Choice Energy program	2017		

LIST OF ITEMS REQUESTED BY CITY COUNCIL

TOPIC	LEAD COUNCIL MEMBER	LEAD STAFF	GENERATED	STATUS/ACTION TO DATE	TARGET COMPLETION	ACTUAL COMPLETION	Follow up
Oversight Board appt		Will Fuentes	8/01/2017 CC	CC discussed, chose not to appt staff	fall 2017		Mayor shall provide rec.
Parking solution for residents The Pines	Mayor	Steve Chan, City Engineer	request of Mayor, 08/01/2017 CC	Council voted for Permit Parking @The Pines	2018		Could serve as pilot program
Travel SOP - for City staff & Council		Will Fuentes	8/01/2017 CC mtg	Existing SOP from 1997	fall 2017		Update needed
Annual Credit Card program report	Nunez	Will Fuentes	Request of B Nunez at 9/11/17 CC mtg	report will include list of employees who have a City credit card	each January		
ONGOING							
Regular Update of Council line item budget	Grilli	Will Fuentes; City Manager	request of M. Grilli 8/01/17 CC mtg	report periodically to Council on own budget status	Nov 2017		
Response to E. Chua on Safe Exchange zones	n/a	Steve Pangelinan	Public Forum at CC mtg 8/01/2017	Chief has spoken to her in past	2017		
Community Choice Energy program		Edesa Bitbadal	spring 2017	Econ. Dev. staff to present Community Choice Energy program	10/17/2017		
Energy retrofit financing program		Edesa Bitbadal	spring 2017	Econ. Dev. staff to present Property Assessed Clean Energy programs	presented 9/19/17 CC mtg	fall 2017 update report due	
Officeholder accounts	Phan	Chris Diaz	request of A. Phan 8/01/17 CC mtg	FPPC may permit this type of committee (not campaign funds)			
COMPLETED							
Help to Assoc of Indo Americans	Phan, Nunez	Mary Lavelle	Request of B Nunez at 8/01/17 CC mtg	A. Phan requested fee waiver for group's August event	9/05/2017 CC	approved 9/05/2017 CC	Swades event at Murphy Park

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AMENDMENT TO THE BYLAWS GOVERNING THE PLANNING COMMISSION OF THE CITY OF MILPITAS

WHEREAS, pursuant to Government Code Section 65100, the City Council of the City of Milpitas (the "City") has created a planning commission to carry out enumerated planning activities on behalf of the City; and

WHEREAS, Section I-500-1.08 of the Milpitas Municipal Code provides that "[t]he Planning Commission shall adopt written rules and regulations as to the time, place and date of its regular meetings and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure," which rules and regulations shall be submitted to the City Council for its review, modification, and approval or disapproval; and

WHEREAS, the rules and regulations currently governing the Planning Commission are found in the City of Milpitas Planning Commission Bylaws (the "Bylaws"), which were last updated in October 2004; and

WHEREAS, on May 24, 2017, at a duly-noticed public meeting, the Milpitas Planning Commission considered and discussed amendments to the Bylaws; and

WHEREAS, at said meeting, the Planning Commission adopted Planning Commission Resolution No. 495, recommending the City Council approve the revised Bylaws; and

WHEREAS, on August 1, 2017, at a duly-noticed public meeting, the Milpitas City Council considered and discussed the proposed revised Bylaws.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the revised Bylaws (attached hereto and incorporated herein as **Exhibit 'A'**), the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council finds that the revised Bylaws are acceptable as presented and will assist the Planning Commission in conducting its operations with efficiency and professionalism.

3. The City Council, based on the above findings, hereby approves the revised Bylaws as presented.

PASSED AND ADOPTED this ____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

EXHIBIT “A”

Planning Commission Bylaws

**CITY OF MILPITAS
PLANNING COMMISSION
BYLAWS**



June 2017

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**BYLAWS
of the
CITY OF MILPITAS PLANNING COMMISSION**

The following Bylaws of the Planning Commission of the City of Milpitas (the “Planning Commission”) were approved by the City Council of the City of Milpitas by adoption of Resolution X, as amended by X. In addition to the rules and procedures set forth herein, the Planning Commission is likewise governed by the Brown Act, the Public Records Act, and all other applicable statutes and laws, including Milpitas Municipal Code (“MMC”) Title I, Section 500, which governs the formation and operation of the Planning Commission.

Section 1 - Preface

Per MMC Section I-500-1.08, the Planning Commission shall adopt written rules and regulations as to the time, place and date of its regular meetings and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure. Such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions or regulations of the City of Milpitas. These bylaws are prepared to serve this purpose. Any modifications to these provisions must be consistent with the underlying Code provisions, as well as all applicable laws.

The City Council of the City of Milpitas established the Planning Commission and granted to it responsibilities in the area of land use, redevelopment issues, and planning permit decisions. These bylaws are intended to assist and be used by the Planning Commission in performing its duties and conducting its meetings. If a conflict arises between these bylaws and the MMC, the MMC shall control.

Section 2 - Commission Officers and Duties

2.01 Officers

The officers of the Planning Commission shall consist of a Chair, Vice-Chair, and a Secretary.

2.02 Selection

At its first regular meeting held for the transaction of business during July, or as soon thereafter as may be possible, the Planning Commission shall elect a Chair and a Vice Chair for such fiscal year. When a vacancy exists in the office of Chair or Vice Chair, the Planning Commission shall elect a member to serve in such capacity for the remainder of the fiscal year. The City of Milpitas staff liaison to the Planning Commission shall serve as the Planning Commission Secretary. The Secretary shall preside over the elections of the Planning Commission officers. Election of the officers shall be placed on the agenda after approval of the agenda.

2.03 Duties

The duties of the Planning Commission officers shall be as follows:

Chair

The Chair shall preside over all meetings of the Planning Commission.

Vice Chair

The Vice-Chair shall assist the Chair in the execution of his or her office and act in his or her absence.

Secretary

It shall be the duty of the Secretary to keep records of all meetings of the Planning Commission.

Section 3 - Meetings

3.01 Regular Meetings

The Planning Commission regular meetings shall generally be the 2nd and 4th Wednesdays of each month at 7:00 p.m. in City Hall. The Planning Commission shall generally hold at least one (1) meeting per month. At the last regular meeting of the calendar year, the Planning Commission shall approve a meeting schedule for the upcoming year, which calendar may be subsequently amended if necessary.

Meetings of the Planning Commission Subcommittee are addressed in Section 7.03 below.

3.02 Special Meetings

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule. Special meetings may be called by the Chair with the consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours notice for special meetings when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.

3.03 Other Meetings

Workshops, study sessions, and retreats are meetings convened for informational purposes, Planning Commission training, and study sessions and do not require the Planning Commission to take any action.

3.04 Attendance and Punctuality

Commissioners are expected to arrive on time and be present for the entire meeting. Commissioners are important City officials whose actions and decisions impact the quality of life in the city. Therefore, only in rare, unavoidable circumstances should

Commissioners miss meetings or workshops. Three (3) or more unexcused absences from meetings and/or workshops during a calendar year shall be reported to the City Clerk, who notifies the City Council of the Commissioner's attendance record. The City Council may choose to subsequently review of the Commissioner's performance to determine any extraordinary reasons or other explanations for the Commissioner's unexcused absences.

3.05 Quorum

A meeting cannot be conducted without a quorum of the Planning Commission. If enough Commissioners abstain due to a conflict of interest so as to lose a quorum, the Commission shall exercise the rule of necessity to regain a quorum, as allowed by law. Otherwise disqualified Commissioners shall be chosen by a draw of straws until a quorum is reached. The Commissioner so chosen shall continue to participate in that matter until it is concluded.

Section 4 – Agendas and Minutes

4.01 Agenda Preparation and Distribution

Not less than nine (9) days prior to any regular scheduled meeting, the secretary of the Commission shall endeavor to prepare an agenda which shall list all matters to be considered by the Commission at the meeting for which the agenda is prepared. The agenda shall ideally be distributed no less than five (5) days prior to the scheduled meeting to all members of the Commission, staff, anyone requesting such agenda and to other persons as the Commission and City Council may direct. Agendas shall be provided as required by the Brown Act.

4.02 Agenda Contents

The agenda shall contain the place, date and time of the meeting and items to be discussed at the meeting, consistent with the Brown Act.

Items can be placed on the agenda by staff as part of their responsibility in reviewing planning applications and administering city projects.

Any Commissioner may request an item be placed on a future Commission agenda. Staff shall advise the Commission how much time may be necessary to prepare background materials related to the requested item and when the next available agenda opening would be. By majority vote, the Planning Commission may place the requested item on a future available agenda, providing at least seventy-two (72) hours prior to the meeting at which such item shall be considered in order to comply with the Brown Act and allow staff to prepare appropriate support materials. Items requiring additional public noticing will be placed on the next available agenda.

4.03 Minutes

The Planning Commission shall keep a record of its resolutions, transactions, findings and determinations. The Secretary shall maintain minutes of all proceedings. The meeting agenda and minutes are a public record and shall be available for inspection.

The minutes shall reflect the maker of the motion and the second for all actions. The vote of each Commissioner shall be recorded in the minutes.

Section 5 – Meeting Conduct

5.01 Purpose

The Planning Commission is a public agency with land use planning and decision-making duties. It is the policy of the Planning Commission to encourage free and open discussion of issues on a Planning Commission meeting agenda, but also to ensure that the Commission completes the agenda in a timely manner and in a process that accords courtesy and respect to all participants.

5.02 Rules

Robert's Rules of Order, Revised, except where inconsistent with the express provisions of law, these bylaws, or other resolutions of the Commission, shall govern the conduct of meetings of the Commission.

5.03 Close of Public Hearing

No evidence shall be taken after the public hearing is closed on a matter.

5.04 Addressing the Commission

As per the Brown Act, the public may comment on any agenda item, however shall do so in the following manner:

Each person addressing the Commission is requested, but not required, to give his/her name and address in an audible tone of voice for the record and to provide the same on a speaker register used to prepare the meeting minutes. The speaker is requested to state whether he or she is appearing as a representative or in a professional capacity such as an attorney, engineer, etc., and to state the name of the individual or organization he or she is representing, if applicable. Unless additional time is granted by the Chair, all remarks shall be limited to three (3) minutes and shall be addressed to the Commission as a body and not to any individual member thereof. The Chair may limit repetitive testimony in the interest of time. No person, other than members of the Commission and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Commission, except through the Chair. Any person who wishes to address the City Attorney or staff shall do so through the Chair and not pose questions or remarks to the Attorney or staff directly.

5.05 Motions

When making a motion, the following options are available:

- (a) Deny without prejudice
- (b) Deny with prejudice
- (c) Approval
- (d) Approval with conditions
- (e) Continue (table)

5.06 Voting

The Chair has the right to vote and make a motion on any issue before the Commission.

The vote of all Planning Commissioners, including the Chair, shall be recorded and no vote shall be taken in secret. All Planning Commissioners shall vote on an item when legally able to do so.

5.07 Super-Majority Vote

Some planning actions, such as approval recommendations for general plan or specific plan amendments, require a super-majority vote, i.e., the affirmative vote of not less than a majority of the total membership of the Planning Commission. The super-majority vote requires the affirmative vote of four (4) of the seven (7) Planning Commissioners.

5.08 Tie-Vote, Lack of Majority Vote

A tie-vote occurs when there is an equal number of Commissioners who voted in favor of a motion as have voted not in favor of a motion, such as a 3-3 vote. A lack of majority vote occurs when less than half of the votes cast support the motion, such as a 3-4 vote.

When either a tie-vote or lack of majority vote occurs, the motion fails, thereby resulting in no action. A majority vote is necessary to take action on an item, regardless of whether the Planning Commission has final authority or advisory authority.

In all cases, the Planning Commission shall work towards formulating a majority recommendation. If this cannot be achieved, the Planning Commission shall clearly summarize their issues to provide direction to the applicant or to the City Council.

5.09 Abstentions

Prior to taking action, the Commission must receive and weigh all presented evidence and testimony. In cases where a Commissioner is not present for public testimony on an item, the Commissioner should abstain from voting. This notwithstanding, in cases where an item has been continued from a meeting at which a decision-maker has been absent, the decision-maker can review the videotape of the meeting or the meeting minutes and participate in the continued hearing and vote.

A Planning Commissioner abstaining from voting shall state a reason.

5.10 Passing the Gavel

When neither the Chair nor the Vice Chair is present or able to vote due to a conflict of interest, the gavel shall be passed to the Commissioner with the longest years of service

as the Chair Pro Tempore with authority to preside over the meeting and/or the agenda item.

5.11 Seating Arrangement

To encourage the integration of recently appointed Commissioners, a meeting seating arrangement shall be established by the Chair.

5.12 Exhibits

All exhibits filed in connection with any pending matter become part of the record of the proceedings and shall be retained subject to compliance with applicable records retention policies of the City.

5.13 Order of Procedure, Public Hearing Guidelines

The following guidelines are for general agenda items. Variations on the guidelines for public hearing items are noted in parentheses.

- Staff report
- Clarifying questions to staff
- Applicant presentation
- Clarifying questions from Commissioners to Applicant
- Public comment on item (Chair opens public hearing)
- Applicant responds to questions, comments for clarification, amplification
- (Close public hearing by motion of Commission)
- Commissioners deliberate, discuss the item
- Commissioners vote

The Chair may vary the order otherwise provided above.

5.14 Reports by Staff or its Consultants

Written reports by staff or its consultants shall be considered a part of the official record of the proceeding to which they relate. Copies of any such written report shall be made available to the public at any hearing held on the proceeding to which such report relates.

Section 6 – Commissioner Conduct

6.01 Purpose

The Planning Commission recognizes that differences of opinion are inherent in its land use subject matter and duties, whether they are differing opinions among Commissioners, or, between Commissioners and staff, or Commissioners and the public. The Commission also recognizes that discussion and resolution of such differences are often the basis for crafting land use decisions that are most appropriate for the City and its neighborhoods. It is the policy of the Planning Commission to recognize such differences and to provide a forum that allows them to be expressed in a respectful, courteous manner.

6.02 Recognition from Chair to Make Remarks

A Commissioner shall obtain recognition from the Chair and address all remarks including those to staff and the City Attorney to the Chair. Once a Commissioner has the floor, questions to the City Attorney and staff shall be directed through the chair.

6.03 Appropriate Remarks

A Commissioner should confine remarks to the merits of the pending question. All statements should have bearing on the adoption of the immediately pending question.

A Commissioner should refrain from offensive remarks directed towards another Commissioner or staff.

A Commissioner should not read lengthy passages from reports, books, quotations, etc., without permission of the Commission.

6.04 When to Withdraw a Motion

The maker of a motion who no longer supports his or her motion should ask permission to withdraw the motion. The maker of a motion may vote against the motion but cannot speak against it.

6.05 Courtesy to Others

A Commissioner should refrain from disrupting the Commission and give courteous attention to other speakers.

No member should speak a second time on a question if any member who has not yet spoken on the question wants to do so.

A Commissioner should be open to all concerns and listen to all participants with an open mind, even if he or she disagrees with them.

6.06 Ex-parte Communication

Commissioners are discouraged from suggesting any change to any project to the applicant or staff, before the project is considered by the Commission as a whole. In addition, to ensure that all Commissioners receive the same information relative to a project that will be reviewed by the Commission, third party contacts are discouraged. Any such communications must be disclosed by the Commissioner at the Commission meeting, prior to the item being considered.

6.07 Communications with the Press

When speaking to the press, Commissioners shall clearly state that they are speaking for themselves only and not for the Commission as a whole.

6.08 Professionalism

Commissioners are expected to exhibit a professional demeanor during public meetings at all times, to ensure decorum and respect to fellow Commissioners, City staff and the public.

6.09 Continued Training

Commissioners should continually strive to improve their land use knowledge and skills.

As funding is available, members of the Planning Commission are encouraged to annually attend the League of California Cities Planner's Institute and may additionally attend the League's Annual Conference. Alternatively, and subject to available funding, Planning Commissioners may choose to attend local conferences or trainings rather than the League's Conference if: (1) the conference or training is related to planning issues applicable in Milpitas, and (2) the amount of money expended by any one Commissioner does not exceed the cost of attending the two League Conferences, as budgeted for the year.

6.10 Meeting Preparation

The General Plan is the City's vision for itself and all Planning Commission decisions must be consistent with it. The Zoning Ordinance is a tool used by the Commission to implement the General Plan. These are Council approved documents and legally binding. It is the responsibility of each Planning Commissioner to read and comprehend both the General Plan and the Zoning Ordinance in order to make sound decisions on issues brought before the Commission.

The effectiveness of the Planning Commission requires the Commissioners thoroughly prepare themselves prior to a public meeting. This may include research or calling upon city Planning staff for clarification and understanding of what is to be discussed.

6.11 Meeting Participation

Each Commissioner's input is important and valued. All Commissioners in attendance are expected to participate.

6.12 Position Justification

Public decisions must be accompanied with coherent reasons, as statements are incorporated into the legal record.

6.13 Staff and Commissioner Roles

Staff's Role

Planning staff's role is to provide the Commission with the information it needs to make an independent decision and to provide the Commission with a professional recommendation supported with analysis. Staff's responsibilities include public noticing and reviewing of applications for completeness and compliance with all local and state codes, including the California Environmental Quality Act (CEQA). In addition, staff shall assist with facilitating meetings.

Commissioner's Role

A Planning Commissioner's role is to review the information provided by staff, evaluate written and oral testimony provided by the general public and the applicant,

to analyze the project proposal itself, and to make an independent decision which is in the best interests of the City and in conformance with applicable laws and regulations.

6.14 The Brown Act

The Brown Act is the California Open Meeting Law. The Planning Commission and Commissioners are subject to its provisions. Commissioners with questions should contact the City Attorney, the Planning Commission Chair or Planning staff.

6.15 Addressing Others

The appropriate title should be used when acknowledging a meeting participant, such as “Mr.”, “Ms.”, “Commissioner”, “Chair”, “Vice-Chair”, etc. This shows respect, professionalism and avoids the appearance of favoritism.

6.16 Conflicts of Interest/Code of Ethics

The City Attorney may be able to provide advice on avoiding legal and perceived conflicts of interest. Questions on a possible conflict should be addressed to the City Attorney prior to the meeting. Any member of the Planning Commission who has a conflict of interest with an item on the agenda shall excuse him or herself prior to the introduction of the agenda item, as required by law.

If at a meeting, an unresolved issue arises as to whether a Planning Commissioner may have a conflict of interest on an agenda item, the Planning Commission may seek the advice of the City Attorney. The Planning Commission may continue the item to a future agenda for resolution of the matter, with consideration of any applicable Permit Streamlining Act provisions.

Each Commissioner should work towards maintaining the highest actual and perceived integrity level while sitting on the Commission. In addition, Planning Commissioners shall adhere to any applicable local regulations governing ethical conduct adopted by the City of Milpitas.

Section 7 – Subcommittees

7.01 Creation of Subcommittees

Per Milpitas Municipal Code Section I-500-1.13, the Planning Commission is authorized to create subcommittees composed of at least two (2) members of the Planning Commission.

7.02 Duties

The duties of any Subcommittee established by the Planning Commission shall be as proscribed by the Planning Commission at the time of the formation of the Subcommittee.

7.03 Meetings

To the extent possible, each Subcommittee meeting shall be held prior to the start of a regularly scheduled Planning Commission meeting.

7.04 Attendance

Each Subcommittee shall consist of two (2) members and an alternate. Attendance of the two (2) members at Subcommittee meetings is required and attendance of the alternate is highly recommended.

7.05 Terms

Subcommittee terms shall be a period of six months. At a regularly scheduled Planning Commission meeting, prior to the beginning of a new term, Planning staff shall announce the Subcommittee members serving on the upcoming term based on the rotation schedule established by the Planning and Neighborhood Services Director or his or her designee.

In order to avoid, where possible, having recently-appointed Planning Commissioners with no previous experience on the Planning Commission serving on the Subcommittee, each member of the Planning Commission shall begin his/her service on the Subcommittee as an alternate member for one term.

7.06 Inability to Serve Due to Conflicts of Interest

In order to maintain the effectiveness of the Subcommittee, each Commissioner, prior to becoming a Subcommittee member, shall consult with the Planning staff and City Attorney to determine the likelihood of facing regular conflicts. Should a Commissioner determine, based on the advice of the City Attorney, that she or he is likely to face regular conflicts of interest, the Commissioner shall abstain from participating on the Subcommittee as either a member or alternate. If a member cannot participate on the Subcommittee due to such a conflict, the Planning Commission Chair shall serve in his or her place. If the Chair cannot serve due to a conflict, then the Planning Commission Vice-Chair shall serve. If neither the Chair nor Vice Chair can serve due to such conflicts, the Commissioner with the longest years of service shall serve.

7.07 Planning Commission Representation on City Subcommittees

Upon the request of the City Council or City staff, Planning Commission representation may be required on various City subcommittees, such as the Transportation Subcommittee and the Flood Plain Subcommittee. The appointment of a representative shall be made annually by the majority vote of the Planning Commission unless a particular representative has been specified by the City Council.

CITY OF MILPITAS
PLANNING COMMISSION
BYLAWS



June 2017

~~CITY OF MILPITAS~~
~~PLANNING COMMISSION~~
~~BYLAWS~~

~~October 2004~~



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**BYLAWS
of the
CITY OF MILPITAS PLANNING COMMISSION**

The following Bylaws of the Planning Commission of the City of Milpitas (the “Planning Commission”) were approved by the City Council of the City of Milpitas by adoption of Resolution X, as amended by X. In addition to the rules and procedures set forth herein, the Planning Commission is likewise governed by the Brown Act, the Public Records Act, and all other applicable statutes and laws, including Milpitas Municipal Code (“MMC”) Title I, Section 500, which governs the formation and operation of the Planning Commission.:

Section 1 - Preface

Milpitas Municipal Code (“MMC”) Title I, Section 500, governs the formation and operation of the Planning Commission. Per MMC Section I-500-1.08, As set forth in Title I, Chapter 500, Section 1.08 of the City of Milpitas Municipal Code (“Code”), the Planning Commission shall adopt written rules and regulations as to the time, place and date of its regular meetings and shall adopt such rules and regulations as it deems necessary to conduct its business including rules of procedure. Such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions or regulations of the City of Milpitas.⁺ These bylaws are prepared to serve this purpose. Any modifications to these provisions must be consistent with the underlying Code provisions, as well as all applicable laws.

The City Council of the City of Milpitas established the Planning Commission and granted to it responsibilities in the area of land use, redevelopment issues, and planning permit decisions. These bylaws are intended to assist and be used by the Planning Commission in performing its duties and conducting its meetings. If a conflict arises between these bylaws and the ~~City of Milpitas Municipal Code~~MMC, the ~~MMC~~Code shall control.

~~Section 2—Adoption and Amendment~~

~~2.01—Planning Commission Adoption and Amendment~~

~~These bylaws shall be adopted by and may be amended by resolution of a majority of the Commissioners present at any Milpitas Planning Commission meeting.~~

~~2.02—City Council Adoption and Amendment~~

~~Upon adoption or amendment by the Planning Commission, such bylaws shall be submitted to the City Council for review. The City Council shall have the power to approve, disapprove or modify said bylaws, as it deems necessary.¹~~

~~Section 3—Membership~~

~~3.01—Composition~~

~~The Planning Commission shall consist of seven (7) members. The initial selection of the members shall be as set forth in a resolution approved by the City Council. Thereafter, the members shall be appointed by the majority of the City Council.¹~~

~~3.02—Qualifications~~

~~At all times during the term of office, a Planning Commissioner shall be a registered voter of the City of Milpitas and a resident of the City of Milpitas. A Planning Commissioner shall not hold any other public office or employment in the government of the City of Milpitas.¹~~

~~3.03—Application for Appointment~~

~~All applications for Planning Commissioners may be reviewed by any City Councilmember. In addition to any other process for the selection of Planning Commissioners, any City Councilmember may recommend to the Mayor a candidate for appointment to the Planning Commission from the entire pool of applicants.¹~~

~~3.04—Terms of Office~~

~~The term of office for each Planning Commissioner shall be three (3) years, commencing on the first day of January and concluding on the 31st day of December of the third year thereafter. These regulations intend to preserve the concept of~~

~~staggered terms for members of the Planning Commission (established by earlier City ordinances).¹~~

~~3.05—Removal from Office~~

~~Any or all Planning Commissioners may be removed from office prior to the expiration of the normal term of office without cause upon an affirmative vote of three (3) City Councilmembers, at a regular meeting of City Council.¹~~

~~3.06—Vacancy~~

~~Any vacancy on the Planning Commission shall be filled by the Mayor with the approval of the City Council within sixty (60) days of the date the vacancy is created. Any Commissioner appointed to fill a vacancy shall complete the unexpired portion of the normal term of the Commissioner whose office has become vacant.¹~~

~~Except in the case of a Commissioner who has been removed from office by vote of the City Council, a Commissioner shall remain in office until his/her successor has been appointed and takes office.~~

~~3.07—Compensation~~

~~Each Planning Commissioner shall receive compensation in the amount of \$100.00 for attending any regularly or specially scheduled Planning Commission meeting. Such compensation shall not be provided for attending subcommittee meetings.¹~~

Section 4—Subcommittees

4.01—Creation of Subcommittees

~~The Planning Commission may create subcommittees composed of at least two (2) members of the Planning Commission.¹~~

4.02—Minor Site, Architectural and Landscaping Modifications Subcommittee^[1]

Duties

~~The duties of this Subcommittee are set forth in XI 10-42.10^[2] of the City of Milpitas Zoning Code and shall generally pertain to minor site modifications and modifications to architecture and landscaping.~~

Meetings

~~The Subcommittee meeting shall be held prior to the start of the regularly scheduled Planning Commission meeting. The agenda items for the Subcommittee shall be included on the Planning Commission agenda.~~

Attendance

~~The Subcommittee shall consist of two (2) members and an alternate. Attendance of the two (2) members at Subcommittee meetings is required and attendance of the alternate is highly recommended.~~

Terms

~~Subcommittee terms shall be a period of three months. The terms shall run from January 1st through March 31st; April 1st through June 30th; July 1st through September 30th; and October 1st through December 31st. At a regularly scheduled Planning Commission meeting, prior to the beginning of a new term, Planning staff shall announce the Subcommittee members serving on the upcoming term based on the rotation schedule below.~~

~~In order to avoid, where possible, having recently appointed Planning Commissioners with no previous experience on the Planning Commission serving on the Subcommittee, Planning staff shall assign to each Planning Commissioner upon appointment to the Planning Commission a position in the rotation schedule below. Each member of the Planning Commission shall begin his/her service on the Subcommittee as an alternate member for one term. The same Commissioner shall then occupy the 1st active member position for a subsequent term, and proceed to the 2nd active member position for the final term of the rotation. Nine months of service completes a full rotation on the Subcommittee.~~

Section 2 - Commission Officers and Duties

Subcommittee Term	Alternate	1 st Active	2 nd Active
January 1 st through March 31 st	A	B	C
April 1 st through June 30 th	G	A	B
July 1 st through September 31 st	F	G	A
October 1 st through December 31 st	E	F	G
January 1 st through March 31 st	D	E	F
April 1 st through June 30 th	C	D	E
July 1 st through September 31 st	B	C	D
October 1 st through December 31 st	A	B	C

Inability to Serve Due to Conflicts of Interest

~~In order to maintain the effectiveness of the Subcommittee, each Commissioner, prior to becoming a Subcommittee member, shall consult with the Planning staff and City Attorney to determine the likelihood of facing regular conflicts due to involvement in a real estate related profession. Should a Commissioner determine, based on the advice of the City Attorney, that s/he is likely to face regular conflicts of interest, the Commissioner shall abstain from participating on the Subcommittee as either a member or alternate. If a member cannot participate on the Subcommittee due to such a conflict, the Planning Commission Chair shall serve in his/her place. If the Chair cannot serve due to a conflict, then the Planning Commission Vice Chair shall serve. If neither the Chair nor Vice Chair can serve due to such conflicts, the Commissioner with the longest years of service shall serve.~~

4.01—Planning Commission Representation on City Subcommittees

~~Upon the request of the City Council or City staff, Planning Commission representation may be required on various City subcommittees, such as the Transportation Subcommittee and the Flood Plain Subcommittee. The appointment of a representative shall be made annually by the majority vote of the Planning Commission at the regularly scheduled meeting when the Chair and Vice~~

~~Chair are appointed, unless a particular representative has been specified by the City Council.~~

~~Section 5—Commission Officers and Duties~~

52.01 Officers

The officers of the Planning Commission shall consist of a Chair, Vice-Chair, and a Secretary.

52.02 Selection

At its first regular meeting held for the transaction of business during July, or as soon thereafter as may be possible, [3] the Planning Commission shall elect a Chair and a Vice Chair for such fiscal year. When a vacancy exists in the office of Chair or Vice Chair, the Planning Commission shall elect a member to serve in such capacity for the remainder of the fiscal year. The City of Milpitas staff liaison to the Planning Commission shall serve as the Planning Commission Secretary ~~unless the Planning Commission chooses to appoint its own secretary at said meeting~~^[4]. The Secretary shall preside over the elections of the Planning Commission officers. Election of the officers shall be placed on the agenda after approval of the agenda.⁺

52.03 Duties

The duties of the Planning Commission officers shall be as follows:

Chair

The Chair shall preside over all meetings of the Planning Commission.

Vice Chair

The Vice-Chair shall assist the Chair in the execution of his or /her office and ~~to~~ act in his or /her absence.

Secretary

It shall be the duty of the Secretary to keep records of all meetings of the Planning Commission.

Section 6—Commission Duties

6.01—General Duties

~~The Planning Commission is the Planning agency for the City of Milpitas. The Planning Commission shall perform all of those duties related to planning and land use, which have been delegated to it by the City Council. These duties are set out in Title XI, Chapter 1 (subdivisions) and Title XI, Chapter 10 (zoning) of the City of Milpitas~~

~~Municipal Code, and include such actions as making decisions on use permits, site and architectural reviews, variances, making recommendations on general plan, specific plan and zoning amendments, and participating in the CEQA compliance process.~~

~~Each Planning Commissioner and the Planning Commission shall have the following duties and powers:~~

- ~~a. — Those specifically authorized by the law of the State of California.⁺~~
- ~~b. — Such duties as are assigned to the Planning Commission by minute action, resolution, or ordinance of the City of Milpitas.⁺~~
- ~~c. — Such powers as are reasonable and necessary in order to enable the Planning Commission to fulfill and carry out its planning functions (see Government Code, Section 65102).⁺~~
- ~~d. — Such powers as are reasonable and necessary in order to enable the Planning Commission to advise the City Council with respect to redevelopment functions set forth in the Health and Safety Code, and to make recommendations regarding owner participation agreements.⁺~~

~~6.02 — General Plan~~

~~The Planning Commission shall review, evaluate, and recommend for adoption a comprehensive, long range, general plan for the physical growth and development of the City of Milpitas and its environs.~~

~~6.03 — Specific Plan~~

~~The Planning Commission shall review, evaluate, and recommend for adoption specific plans designed to effectuate and implement the General Plan.~~

~~Section 37~~ - Meetings

73.01 Regular Meetings

The Planning Commission regular meetings shall generally [5] be the 2nd and 4th Wednesdays of each month at 7:00 p.m. in City Hall. The Planning Commission shall generally [6] ~~not hold less at least than~~ one (1) meeting per month. At the last regular meeting of the calendar year, the Planning Commission shall approve a meeting schedule for the upcoming year, which calendar may be subsequently amended if necessary [7].⁺

Meetings of the Planning Commission Subcommittee are addressed in Section 7.03 below.

73.02 Special Meetings

Special meetings of the Commission are meetings called in addition to those on the approved meeting schedule. Special meetings may be called by the Chair with the

consent of at least three (3) other members or called with the consent of four (4) members of the Commission. The Brown Act requires the agenda for special meetings to be posted twenty-four (24) hours prior to the meeting. It is a policy of the Planning Commission to provide seventy-two (72) hours notice for special meetings when possible to allow staff to prepare appropriate support materials. However, lack of seventy-two (72) hour notice will not preclude action if the Brown Act notice requirements are met.²

7.03 3.03 Other Meetings

Workshops

Workshops, study sessions, and retreats are meetings convened for informational purposes, Planning Commission training, and study sessions and do not require the Planning Commission to take any action. ~~Workshops and agendas posted for workshops are subject to the Brown Act.~~²

Emergency Meetings

~~The Brown Act allows for emergency meetings, however, given the Planning Commission's authority it is unlikely that this will be necessary.~~²

37.04 Attendance and Punctuality

Commissioners are expected to arrive on time and be present for the entire meeting. Commissioners are important City officials whose actions and decisions impact the quality of life in the city. Therefore, only in rare, unavoidable circumstances should Commissioners miss meetings or workshops. ~~If a Planning Commissioner misses~~ T ~~three (3) or more unexcused absences from~~ meetings and/or workshops during a calendar year shall be reported to ~~r, the Secretary shall forward this information to~~ the City Clerk, who notifies the City to request ~~Council review~~ of the Commissioner's attendance record. The City Council may choose to subsequently review of the Commissioner's performance purpose of this review will be to determine any extraordinary reasons or other explanations for the Commissioner's unexcused absences. ~~The said review will be held during a regularly scheduled City Council meeting and at the conclusion of said review the City Council will hold a vote to determine if the Planning Commissioner should be removed from office.~~

7.05 3.05 Quorum

A meeting cannot be conducted without a quorum of the Planning Commission. ~~and a quorum shall consist of a majority of the entire Commission.~~ If enough Commissioner's abstain due to a conflict of interest so as to lose a quorum, the Commission shall exercise the rule of necessity to regain a quorum, as allowed by law. Otherwise disqualified Commissioners shall be chosen by a draw of straws until a quorum is reached. The Commissioner so chosen shall continue to participate in that matter until it is concluded.

Section ~~84~~ – Agendas and Minutes

84.01 Agenda Preparation and Distribution

Not less than nine (9) days prior to any regular scheduled meeting, the secretary of the Commission shall endeavor to prepare an agenda which shall list all matters to be considered by the Commission at the meeting for which the agenda is prepared. ~~This The~~ agenda ~~is a public record and~~ shall ideally be distributed no less than five (5) days prior to the scheduled meeting to all members of the Commission, staff, anyone requesting such agenda and to other persons as the Commission and City Council may direct. Agendas shall be provided as required by the Brown Act.

84.02 Agenda Contents

The agenda shall contain the place, date and time of the meeting and items to be discussed at the meeting, consistent with the Brown Act.⁻²

Items can be placed on the agenda by staff as part of their responsibility in reviewing planning applications and administering city projects.

~~In addition, the City Attorney may recommend, where appropriate, pending litigation matters be placed on the agenda as closed session items, consistent with the Brown Act.⁻²~~

Any Commissioner may request ~~to place~~ an item be placed on a future Commission agenda. Staff shall advise the Commission how much time may be necessary to prepare background materials related to the requested item and when the next available agenda opening would be. By majority vote, the Planning Commission may place the requested item on a future available agenda, providing at least seventy-two (72) hours prior to the meeting at which such item shall be considered in order to comply with the Brown Act and [8]allow staff to prepare appropriate support materials. Items requiring additional public noticing will be placed on the next available agenda.

~~The Chair shall have the authority to independently place items on the next available or other upcoming Commission agenda by presenting said items to the Secretary. It is a policy of the Planning Commission to provide seventy-two (72) hours when possible to allow staff to prepare appropriate support materials.~~

~~Items of “immediate need” may be added to the agenda at the same meeting, subject to the provisions of the Brown Act.⁻²~~

~~8.03~~ 4.03 Minutes

The Planning Commission shall keep a record of its resolutions, transactions, findings and determinations. The Secretary shall maintain minutes of all proceedings. The meeting agenda and minutes are a public record and shall be available for inspection.

The minutes shall reflect the maker of the motion and the second for all actions. The vote of each Commissioner shall be recorded in the minutes.

Section ~~9.5~~ – Meeting Conduct

~~9.01~~ 5.01 Purpose

The Planning Commission is a public agency with land use planning and decision-making duties. It is the policy of the Planning Commission to encourage free and open discussion of issues on a Planning Commission meeting agenda, but also to ensure that the Commission completes the agenda in a timely manner and in a process that accords courtesy and respect to all participants.

~~59.02~~ Rules

Robert's Rules of Order, Revised, except where inconsistent with the express provisions of law, these bylaws, or other resolutions of the Commission, shall govern the conduct of meetings of the Commission.

~~95.03~~ Close of Public Hearing

No evidence shall be taken after the public hearing is closed on a matter. ~~The public hearing may be reopened to take additional evidence, at the discretion of the Commission, prior to action on the matter.~~

~~95.04~~ Addressing the Commission

As per the Brown Act⁻², the public may comment on any agenda item, however shall do so in the following manner:

Each person addressing the Commission ~~shall is requested, but not required, to~~ give his/her name and address in an audible tone of voice for the record and ~~shall writeto~~ provide the same on a speaker register used to prepare the meeting minutes. ~~He/she~~The speaker is requested to ~~shall~~ state whether he or /she is appearing as a representative or in a professional capacity such as an attorney, engineer, etc., and ~~shall to~~ state the name of the individual or organization he or /she is representing, if applicable. Unless additional time is granted by the Chair, all remarks shall be limited to ~~two three~~ 19 (23) minutes and shall be addressed to the Commission as a body and not to any individual member thereof. The Chair may limit repetitive testimony in the interest of time. No person, other than members of the Commission and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Commission, except through the Chair. Any person who wishes to address the City Attorney or staff shall do so through the Chair and not pose questions or remarks to the Attorney or staff directly.

~~9.05~~ 5.05 Motions

When making a motion, the following options are available:

- (a) Deny without prejudice

- (b) Deny with prejudice
- (c) Approval
- (d) Approval with conditions
- (e) Continue (table)

95.06 Voting

The Chair has the right to vote and make a motion on any issue before the Commission. ~~He/she need not exclaim his/her vote except to break a tie and if not exclaiming his/her vote, it will be recorded with the majority unless so designated otherwise.~~

The vote of all Planning Commissioners, including the Chair, shall be recorded and no vote shall be taken in secret. All Planning Commissioners ~~are required to~~ shall vote on an item when legally able to do so.

95.07 Super-Majority Vote

Some planning actions, such as approval recommendations for general plan or specific plan amendments, require a super-majority vote, i.e., the affirmative vote of not less than a majority of the total membership of the Planning Commission. The super-majority vote requires the affirmative vote of four (4) of the seven (7) Planning Commissioners.

95.08 Tie-Vote, Lack of Majority Vote

A tie-vote occurs when there is an equal number of Commissioners who voted in favor of a motion as have voted not in favor of a motion, such as a 3-3 vote. A lack of majority ~~of~~ vote occurs when less than half of the votes cast support the motion, such as a 3-4 vote. When either a tie-vote or lack of majority vote occurs, the motion fails, thereby resulting in no action. A majority vote is necessary to take ~~an~~ action on an item, regardless of whether the Planning Commission has final authority or advisory authority.

~~In the event of a tie vote, the Planning Commission may consider continuing the item in order to obtain of a majority vote. However, the tie vote shall be resolved in a timely manner to ensure no project is inadvertently deemed approved under the Permit Streamlining Act.~~

~~The failure of the Planning Commission to make a majority recommendation to the City Council regarding amendments to the General Plan results in the item not going forward to the City Council, unless the applicant appeals.~~ In all cases, the Planning Commission shall work towards formulating a majority recommendation. If this cannot be achieved, the Planning Commission shall clearly summarize their issues to provide direction to the applicant or to the City Council.

95.09 Abstentions

Prior to taking action, the Commission must receive and weigh all presented evidence and testimony. In cases where a Commissioner is not present for public testimony on an item, the Commissioner should abstain from voting. This notwithstanding, in cases where an item has been continued from a meeting at which a decision-maker has been

absent, the decision-maker can review the videotape of the meeting or the meeting minutes and participate in the continued hearing and vote.

A Planning Commissioner abstaining from voting shall state a reason. ~~The abstention shall generally be counted as a vote with the majority. Examples of abstentions that would not be recorded as a vote for the motion include, but are not limited to, abstentions due to a conflict of interest, when an affirmative vote is required for the matter, or if the abstention would break a tie vote.~~

95.10 Passing the Gavel

When neither the Chair nor the Vice Chair is present or able to vote due to a conflict of interest, the gavel shall be passed to the Commissioner with the longest years of service as ~~a the Chair Pro Tempore with authority Planning Commissioner~~ to preside over the meeting and/or the agenda item.

95.11 Seating Arrangement

To encourage the integration of recently appointed Commissioners, a meeting seating arrangement shall be established by the Chair.

95.12 Exhibits

All exhibits filed in connection with any pending matter become part of the record of the proceedings and shall be retained subject to compliance with applicable records retention policies of the City.

95.13 Order of Procedure, Public Hearing Guidelines

The following guidelines are for general agenda items. Variations on the guidelines for public hearing items are noted in parentheses.

- Staff report
- Clarifying questions to staff
- Applicant presentation
- Clarifying questions from Commissioners to Applicant
- Public comment on item (Chair opens public hearing)
- Applicant responds to questions, comments for clarification, amplification (Close public hearing by motion of Commission)
- Commissioners deliberate, discuss the item
- Commissioners vote

The Chair may vary the order otherwise provided above.

95.14 Notice of Hearings

~~The Commission may require a notice in addition to that required by law. In such cases, the Chair shall direct that notice be given by a specified method. Failure to provide this~~

~~additional notice shall not be grounds for the Planning Commission to deny or not consider the request.~~

~~9.15~~—Reports by Staff or its Consultants

Written reports by staff or its consultants shall be considered a part of the official record of the proceeding to which they relate. Copies of any such written report shall be made available to the public at any hearing held on the proceeding to which such report relates.

Section ~~10.6~~ – Commissioner Conduct

~~106.01~~ Purpose

The Planning Commission recognizes that differences of opinion are inherent in its land use subject matter and duties, whether they are differing opinions among Commissioners, or, between Commissioners and staff, or Commissioners and the public. The Commission also recognizes that discussion and resolution of such differences are often the basis for crafting land use decisions that are most appropriate for the City and its neighborhoods. It is the policy of the Planning Commission to recognize such differences and to provide a forum that allows them to be expressed in a respectful, courteous manner.

~~106.02~~ Recognition from Chair to Make Remarks

A Commissioner shall obtain recognition from the Chair and address all remarks including those to staff and the City Attorney to the Chair. Once a Commissioner has the floor, questions to the City Attorney and staff shall be directed through the chair.

~~10.03~~ ~~6.03~~ Appropriate Remarks

A Commissioner should confine remarks to the merits of the pending question. All statements should have bearing on the adoption of the immediately pending question.

A Commissioner should refrain from offensive remarks directed towards another Commissioner or staff.

A Commissioner should not read lengthy passages from reports, books, quotations, etc., without permission of the Commission.

~~10.04~~ ~~6.04~~ When to Withdraw a Motion

The maker of a motion who no longer supports his or her motion should ask permission to withdraw the motion. The maker of a motion may vote against the motion but cannot speak against it.

~~10.05~~ ~~6.05~~ Courtesy to Others

A Commissioner should refrain from disrupting the Commission and give courteous attention to other speakers.

No member should speak a second time on a question if any member who has not yet spoken on the question wants to do so.

A Commissioner should be open to all concerns and listen to all participants with an open mind, even if he or /she disagrees with them.

~~10.06~~ 6.06 Ex-parte Communication

Commissioners are discouraged from suggesting any change to any project to the applicant or staff, before the project is considered by the Commission as a whole. In addition, to ensure that all Commissioners receive the same information relative to a project that will be reviewed by the Commission, third party contacts are discouraged. Any such communications ~~should~~ must be disclosed by the Commissioner at the Commission meeting, prior to the item being considered.

~~10.07~~ 6.07 Communications with the Press

When speaking to the press, Commissioners ~~should be very specific in~~ shall clearly state stating that they are speaking for themselves only and not for the Commission as a whole.

~~10.08~~ 6.08 Professionalism

Commissioners are expected to exhibit a professional demeanor during public meetings at all times, to ensure decorum and respect to fellow Commissioners, City staff and the public.

~~As Milpitas City officials, it is important that Commissioners dress professionally. During the summer months, from July through September, Commissioners may dress for very warm weather, however, attire should be appropriate for public meetings.~~

~~10.09~~ 6.09 Continued Training

Commissioners should continually strive to improve their land use knowledge and skills.

~~As funding is available, m~~Members of the Planning Commission are encouraged to annually attend the League of California Cities Planner's Institute and may additionally attend the League's Annual Conference. Alternatively, and subject to available funding, Planning Commissioners may choose to attend local conferences or trainings rather than the League's Conference if ~~the following two factors are satisfied~~: (1) the conference or training is related to planning issues applicable in Milpitas, and (2) the amount of money expended by any one Commissioner does not exceed the cost of attending the two League Conferences, as budgeted for the year.

~~10.10~~ 6.10 Meeting Preparation

The General Plan is the City's vision for itself and all Planning Commission decisions must be consistent with it. The Zoning Ordinance is a tool used by the Commission to implement the General Plan. These are Council approved documents and legally binding.

It is the responsibility of each Planning Commissioner to read and comprehend both the General Plan and the Zoning Ordinance in order to make sound decisions on issues brought before the Commission.

The effectiveness of the Planning Commission requires the Commissioners thoroughly prepare themselves prior to a public meeting. This may include ~~site visits~~, research or calling upon city Planning staff for clarification and understanding of what is to be discussed.

610.11 Meeting Participation

Each Commissioner's input is important and valued. All Commissioners in attendance are expected to participate.

106.12 Position Justification

Public decisions must be accompanied with coherent reasons, as ~~since~~ statements are incorporated into the legal record.

106.13 Staff and Commissioner Roles

Staff's Role

Planning staff's role is to provide the Commission with the information it needs to make an independent decision and to provide the Commission with a professional recommendation supported with analysis. Staff's responsibilities include public noticing and reviewing of applications for completeness and compliance with all local and state codes, including the California Environmental Quality Act (CEQA). In addition, staff shall assist with facilitating meetings, ~~when needed~~.

Commissioner's Role

A Planning Commissioner's role is to review the information provided by staff, evaluate written and oral testimony provided by the general public and the applicant, to analyze the project proposal itself, and to make an independent decision which is in the best interests of the City and in conformance with applicable laws and regulations.

106.14 The Brown Act

The Brown Act is the California Open Meeting Law. The Planning Commission and Commissioners are subject to its provisions.⁻² Commissioners with questions should contact the City Attorney, the Planning Commission Chair or Planning staff.

106.15 Addressing Others

The appropriate title should be used when acknowledging a meeting participant, such as "Mr.", "Ms.", "Commissioner", "Chair", "Vice-Chair", etc. This shows respect, professionalism and avoids the appearance of favoritism.

106.16 Conflicts of Interest/Code of Ethics

The City Attorney ~~can~~may be able to provide advice on avoiding legal and perceived conflicts of interest. Questions on a possible conflict should be addressed to the City Attorney prior to the meeting. Any member of the Planning Commission who has a conflict of interest with an item on the agenda shall excuse him or ~~herself~~ prior to the introduction of the agenda item, as required by law.

If at a meeting, an unresolved issue arises as to whether a Planning Commissioner may have a conflict of interest on an agenda item, the Planning Commission may seek the advice of the City Attorney. The Planning Commission may continue the item to a future agenda for resolution of the matter, with consideration of any applicable Permit Streamlining Act provisions.

Each Commissioner should work towards maintaining the highest actual and perceived integrity level while sitting on the Commission. In addition, Planning Commissioners shall adhere to ~~the Code of Ethics adopted by City Council Resolution 2714, attached in the Appendix,~~any applicable local regulations governing ethical conduct adopted by the City of Milpitas.

Section 7 – Subcommittees

7.01 Creation of Subcommittees

Per Milpitas Municipal Code Section I-500-1.13, the Planning Commission is authorized to create subcommittees composed of at least two (2) members of the Planning Commission.

7.02 Duties

The duties of any Subcommittee established by the Planning Commission shall be as proscribed by the Planning Commission at the time of the formation of the Subcommittee.

7.03 Meetings

To the extent possible^[10], each Subcommittee meeting shall be held prior to the start of a regularly scheduled Planning Commission meeting.

7.04 Attendance

Each Subcommittee shall consist of two (2) members and an alternate. Attendance of the two (2) members at Subcommittee meetings is required and attendance of the alternate is highly recommended.

7.05 Terms

Subcommittee terms shall be a period of ~~six~~ ^[11] months. At a regularly scheduled Planning Commission meeting, prior to the beginning of a new term, Planning staff shall announce the Subcommittee members serving on the upcoming term based on the rotation schedule below. Established by the Planning and Neighborhood Services Director or his or her designee.

In order to avoid, where possible, having recently-appointed Planning Commissioners with no previous experience on the Planning Commission serving on the Subcommittee, each member of the Planning Commission shall begin his/her service on the Subcommittee as an alternate member for one term^[12].

7.06 Inability to Serve Due to Conflicts of Interest

In order to maintain the effectiveness of the Subcommittee, each Commissioner, prior to becoming a Subcommittee member, shall consult with the Planning staff and City Attorney to determine the likelihood of facing regular conflicts^[13]. Should a Commissioner determine, based on the advice of the City Attorney, that she or he is likely to face regular conflicts of interest, the Commissioner shall abstain from participating on the Subcommittee as either a member or alternate. If a member cannot participate on the Subcommittee due to such a conflict, the Planning Commission Chair shall serve in his or her place. If the Chair cannot serve due to a conflict, then the Planning Commission Vice-Chair shall serve. If neither the Chair nor Vice Chair can serve due to such conflicts, the Commissioner with the longest years of service shall serve.

7.07 Planning Commission Representation on City Subcommittees

Upon the request of the City Council or City staff, Planning Commission representation may be required on various City subcommittees, such as the Transportation Subcommittee and the Flood Plain Subcommittee. The appointment of a representative shall be made annually by the majority vote of the Planning Commission unless a particular representative has been specified by the City Council.

¹ ~~These provisions are based on City of Milpitas Municipal Code Title I Chapter 500 (Ordinance 41.8 (part), 1997). Any modifications to these provisions must be consistent with the underlying Code provisions.~~

² ~~Brown Act, California Open Meeting Law, Government Code Sections 54950-54962. The Brown Act generally requires that Planning Commission business occur at public meeting, with notice provided through a posted agenda. The agenda both guides and limits the scope of the Commission business considered at the meeting. Additional notice for specific agenda items may be required pursuant to other statutes and ordinances.~~

REGULAR

NUMBER: 139.3

TITLE: AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA / COLORADO / FLORIDA / OREGON, INC., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MILPITAS, CALIFORNIA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of June 21, 2005, upon motion by Councilmember Livengood and was adopted (second reading) by the City Council at its meeting of July 5, 2005, upon motion by Councilmember Livengood. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano, Livengood and Polanski.

NOES: (0) None.

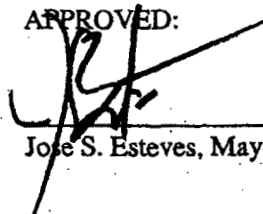
ABSENT: (0) None.

ABSTAIN: (0) None.

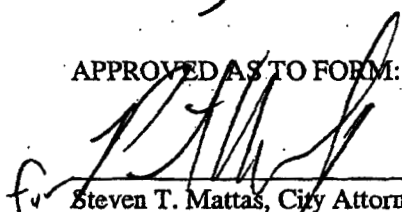
ATTEST:


Mary Lavelle, City Clerk

APPROVED:


Jose S. Esteves, Mayor

APPROVED AS TO FORM:


Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

CABLE TELEVISION FRANCHISE ORDINANCE

FOR THE

CITY OF MILPITAS, CALIFORNIA

AND

COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC.

June 2005

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ORDINANCE NO. 139.3

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST OF CALIFORNIA/COLORADO/FLORIDA/OREGON, INC., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF MILPITAS, CALIFORNIA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND THE PUBLIC RIGHTS-OF-WAY AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREIN;

The City Council of the City of Milpitas, California ordains:

STATEMENT OF INTENT AND PURPOSE

City intends, by the adoption of this Franchise, to bring about the further development of a Cable System, and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

Adoption of this Franchise is, in the judgment of the City Council, in the best interests of City and its residents.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing, upgrading, and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable state statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1. SHORT TITLE AND DEFINITIONS

1. Short Title. This Franchise Ordinance shall be known and cited as the Cable Television Franchise Ordinance.
2. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the

context, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

- a. "Applicable Laws" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.
- b. "Basic Cable Service" means any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).
- c. "Cable Service" or "Service" means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6).
- d. "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:
 - i. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - ii. a facility that serves Subscribers without using any public Right-of-Way;
 - iii. a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
 - iv. an open video system that complies with 47 U.S.C. § 573; or
 - v. any facilities of any electric utility used solely for operating its electric utility systems.

- e. "Channel" or "Cable Channel" means the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering an analog television Channel as defined by the FCC.
- f. "City" means City of Milpitas, a municipal corporation, in the State of California, acting by and through its City Council, or its lawfully appointed designee.
- g. "City Council" means the governing body of the City of Milpitas, California.
- h. "Converter" means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the Service.
- i. "Drop" means the cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.
- j. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- k. "Franchise" or "Cable Franchise" means this franchise ordinance and the regulatory and contractual relationship established hereby.
- l. "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.
- m. "Grantee" is Comcast of California/Colorado/Florida/Oregon, Inc., its lawful successors, transferees or assignees.
- n. "Gross Revenue" means any and all cash, credits, property or consideration of any kind or nature that constitutes revenue in accordance with Generally Accepted Accounting Principles and that arise from, are attributable to, or are in any way derived directly or indirectly by the Grantee or its Affiliates, or by any other entity that is a cable operator of Grantee's Cable System, from the operation of the Grantee's Cable System to provide Cable Services, except as hereinafter specifically excluded. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Grantee's Cable System to provide Cable Services in the City: Monthly fees collected from Subscribers for any basic, optional, premium, per-

channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; revenues from rental or sales of converters or other equipment; fees from third party unaffiliated programmers for leased access programming; advertising revenues; revenues from the sale or carriage of other Cable Services; and revenues from home shopping channels. Gross revenues shall not include any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or User by any governmental unit and which are collected by Grantee on behalf of said governmental unit. Gross Revenues shall not include (i) any compensation awarded to Grantee based on the City's condemnation of property of Grantee; (ii) any uncollected receipts (i.e., "bad debt"), provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenue in the period collected; (iii) revenues from program guides; (iv) revenues from tower leases.

- o. "Installation" means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.
- p. "Normal Business Hours" means those hours during which most similar businesses in City are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.
- q. "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, severe or unusual weather conditions, and interruptions associated with upgrading the cable system. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance of the Cable System.
- r. "Other Programming Service" means information that a cable operator makes available to all Subscribers generally.
- s. "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Other Programming Services.
- t. "PEG" means public, educational and governmental.
- u. "Person" is any Person, firm, partnership, association, corporation, company, limited liability entity or other legal entity.
- v. "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in City in which the City has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place,

area, or real property owned by or under the control of City, including other dedicated Rights-of-Way for travel purposes and utility easements.

- w. "Right-of-Way Ordinance" means any ordinance codifying requirements regarding regulation, management and use of Rights-of-Way in City, including registration and permitting requirements.
- x. "Service Area" or "Franchise Area" means the entire geographic area within the City as it is now constituted or may in the future be constituted.
- y. "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels.
- z. "Standard Installation" means any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- aa. "Subscriber" means any Person who lawfully receives Cable Service via the System consistent with terms of Grantee's terms and conditions then in force. In the case of multiple office buildings or multiple dwelling units, the "Subscriber" means the lessee, tenant or occupant not the building owner.
- bb. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1. Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein. Failure of Grantee to provide a System as described herein, or meet the obligations and comply with all provisions herein, shall be deemed a violation of this Franchise.
2. Grant of Nonexclusive Authority. This Franchise shall be nonexclusive, and City reserves the right to grant use of said Rights-of-Way to any Person at any time during the period of this Franchise for the provision of Cable Service
 - a. The Grantee shall have the right and privilege, subject to the permitting and other lawful requirements of City ordinance, rule or procedure, to construct, erect, and maintain, in, upon, along, across, above, over and under the Rights-of-Way in City a Cable System. The System constructed and maintained by Grantee or its agents shall not interfere with other uses of the Rights-of-Way. Grantee shall make use of existing poles and other above and below ground facilities available to Grantee to the extent it is technically and economically feasible to do so.
 - b. Notwithstanding the above grant to use Rights-of-Way, no Right-of-Way shall be used by Grantee if City determines that such use is inconsistent with the terms,

conditions, or provisions by which such Right-of-Way was created or dedicated, or with the present use of the Right-of-Way.

3. Competitive Equity.

- a. The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: franchise fees; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards, required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this franchise, the City agrees that it shall amend this franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon the City and Grantee.
- b. In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.
- c. In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the city's Public Rights of Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, the material provisions thereof shall be comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

4. Lease or Assignment Prohibited. No Person may lease Grantee's System for the purpose of providing Cable Service until and unless such Person shall have first obtained and shall currently hold a valid franchise or other lawful authorization containing substantially similar burdens and obligations to this Franchise. Any assignment of rights under this Franchise shall be subject to and in accordance with the requirements of Section 9 of this Franchise. This provision shall not prevent Grantee from complying with any commercial leased access requirements or any other provisions of Applicable Law.

5. Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of execution by City, unless sooner renewed, revoked or terminated as herein provided.

6. Previous Franchises. Upon acceptance by Grantee as required by Section 13.2 herein, this Franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to Grantee.
7. Compliance with Applicable Laws, Resolutions and Ordinances.
 - a. The terms of this Franchise shall define the contractual rights and obligations of Grantee with respect to the provision of Cable Service and operation of the System in City. However, Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the police power rights of City. This Franchise may also be modified or amended with the written consent of City and Grantee as provided in Section 12.3 herein.
 - b. Grantee shall not, through the application of City ordinance or regulation of Rights-of-Way, be subject to additional burdens with respect to usage of Rights-of-Way, which exceed burdens on similarly situated Rights-of-Way users.
 - c. In the event of any conflict between this Franchise and any City ordinance or regulation which addresses usage of the Rights-of-Way and the Grantee cannot determine how to comply with any Right-of-Way requirement of City, whether pursuant to this Franchise or other requirement, Grantee shall immediately provide written notice of such question, including Grantee's proposed interpretation, to City, in accordance with Section 2.9. City shall provide a written response within fourteen (14) days of receipt indicating how the requirements cited by Grantee apply. Grantee may proceed in accordance with its proposed interpretation in the event a written response is not received within seventeen (17) days of mailing or delivering such written question.
8. Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligations under this Franchise and to assure uninterrupted Service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with Applicable Laws.
9. Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the residents of the potential cable Subscribers or the area in which such group resides.
10. Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or City's manager of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City: City Manager
City of Milpitas
455 Calaveras Boulevard
Milpitas, CA 95035

If to Grantee: Director of Government Affairs
South Bay Area
Comcast of California/Colorado/Florida/Oregon, Inc.
1900 South 10th Street
San Jose, CA 95112

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 3. CONSTRUCTION STANDARDS

1. Registration, Permits, Construction Codes, and Cooperation.

- a. Grantee shall comply with the construction requirements of local, state and federal laws.
- b. Grantee agrees to obtain a permit as required by City prior to removing, abandoning, relocating or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Grantee is required to make repairs, in compliance with federal or state laws, that are of an emergency nature. Grantee will notify City prior to such repairs, if practicable, and will obtain the necessary permits in a reasonable time after notification to City.
- c. Reimbursement paid through the permitting process is separate and in addition to any other fees included in the Franchise. Grantee, at the time of or prior to applying for permits, shall provide City with a description of the facility to be provided by the Grantee in sufficient detail for City to determine compliance with the Franchise and Applicable Laws.
- d. City may issue reasonable policy guidelines to all grantees to establish procedures for determining how to control issuance of engineering permits to multiple grantees for the use of the same Rights-of-Way for their facilities. Grantee shall cooperate with City in establishing such policy and comply with the procedures established by the City Manager or his or her designee to coordinate the issuance of multiple engineering permits in the same Right-of-Way segments.
- e. Grantee shall first obtain the written approval of City prior to commencing any construction or reconstruction on the Rights-of-Way and public places of City.

Such approval shall not be unreasonably withheld. In the event that the City has not responded to the Grantee's permit application in writing within 30 days, Grantee may request a meet and confer with the City to determine the status of the request.

- f. Failure to obtain permits or comply with permit requirements shall subject Grantee to all enforcement remedies available to City under Applicable Laws or this Franchise.
 - g. Grantee shall meet with developers and be present at pre-construction meetings to ensure that the newly constructed Cable System facilities are installed in new developments within City in a timely manner.
 - h. Upon written request, Grantee shall provide a written status report to City every ninety (90) days regarding its progress toward completion of any System upgrade/construction, as required by Section 4 herein.
 - i. Upon written request, Grantee shall hold an annual meeting with City to coordinate construction plans of both parties for the upcoming year.
2. Ongoing Construction. Grantee shall notify City at least ten (10) days prior to the commencement of any construction in any Rights-of-Way. Grantee shall not open or disturb the surface of any Rights-of-Way or public place for any purpose without first having obtained a permit to do so in the manner provided by law. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

3. Use of Existing Poles or Conduits.

- a. Grantee shall utilize existing and/or replacement poles, conduits and other facilities whenever commercially reasonable and shall not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of City is obtained. No location or any pole or wire-holding structure of Grantee shall be a vested interest, and such poles or structures owned by Grantee shall be removed or modified by Grantee at its own expense whenever City determines that the public convenience would be enhanced thereby.
- b. The Grantee shall place its facilities underground in a manner consistent with those areas of City where existing telephone and electric services are both underground at the time of construction by Grantee. In areas where either telephone or electric utility facilities are installed aerially at the time of System construction, Grantee may install its facilities aerially; however, at such time as the existing aerial facilities are placed underground, Grantee shall likewise place its facilities underground at its sole cost, consistent with Rule 20 of the California Public Utilities Commission Rules and Regulations. If City requires utilities to bury lines which are currently overhead, and the City financially participates in said under-grounding, then the City will provide the same cost sharing to the Grantee. For purposes of this section, under-grounding of facilities is applicable to distribution cable, wiring, utility poles and other related equipment. Above ground pedestals, distributions boxes and other components normally found above ground are not included in those facilities that may require under-grounding. In situations where under-grounding of facilities is not technically feasible, Grantee shall notify the City and request specific exemptions on a case-by-case basis.

4. Minimum Interference.

- a. Grantee shall use its best efforts to give reasonable prior notice to any adjacent private property owners who will be negatively affected or impacted by Grantee's work in the Rights-of-Way.
- b. All transmission and distribution structures, lines and equipment erected by Grantee shall be located so as to cause minimum interference with the unencumbered use of Rights-of-Way and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Rights-of-Way and public places.
- c. Grantee shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

5. Disturbance or Damage. Any and all Rights-of-Way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to its original condition prior to

Grantee's work, as determined by City. If Grantee shall fail to promptly perform the restoration required herein, after written request of City and reasonable opportunity to satisfy that request, City shall have the right to put the Rights-of-Way back into its original condition prior to Grantee's work. In the event City determines that Grantee is responsible for such disturbance or damage, Grantee shall be obligated to fully reimburse City for such restoration within thirty (30) days after its receipt of City's invoice thereof.

6. Temporary Relocation.

- a. At any time during the period of the Franchise, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate or remove any of its property when, in the opinion of City, (i) the same is required by reason of traffic conditions, public safety, Rights-of-Way vacation, freeway or Rights-of-Way construction, alteration to or establishment of any Rights-of-Way or any facility within the Rights-of-Way, sidewalk, or other public place, including but not limited to, installation of sewers, drains, waterlines, power lines, traffic signal lines or transportation facilities; or (ii) a City project or activity makes disconnection, removal, or relocation necessary.
- b. Grantee shall, on request of any Person holding a permit to move a building, temporarily raise or lower its wires to permit the movement of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than five (5) days advance notice to arrange such temporary wire alterations.

7. Emergency. Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Manager, police chief, fire chief, or their delegates, to remove or damage any of Grantee's facilities, no charge shall be made by Grantee against City for restoration, repair or damages.

8. Tree Trimming. Grantee shall not trim any trees or other foliage located on private property prior to obtaining the written consent of the owner of said property. Any trimming of trees or other foliage by the Grantee in the Rights-of-Way shall not occur prior to obtaining the written consent of the City. Such trees or other foliage shall be trimmed at Grantee's own expense as may be necessary to protect its wires and facilities, subject to supervision and direction by City.

9. Protection of Facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, re-grading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

10. Installation Records. Each Grantee shall keep accurate records of the location of those trunk and distribution facilities located in the Rights-of-Way and public ways and furnish them to City upon request. Grantee shall cooperate with City to furnish such information

in an electronic read-only mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the Rights-of-Way and public ways, Grantee shall provide City with records in an electronic read-only format, if possible compatible with the then-current City electronic mapping format showing the location of the new underground and above ground trunk and distribution facilities. To the extent possible under applicable law, the City shall protect the Grantees plans, designs and other information marked by the Grantee as proprietary or trade secrets.

11. Locating Facilities.

- a. If, during the design process for public improvements, City discovers a potential conflict with proposed construction, Grantee shall either: (a) locate and, if necessary, expose its facilities in conflict or (b) use a location service under contract with City to locate or expose its facilities. Grantee is obligated to furnish the location information in a timely manner, but in no case longer than thirty (30) days.
- b. City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, re-grade, widen, realign, or maintain any Rights-of-Way and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction within the Rights-of-Way of City limits.

12. City's Rights.

- a. Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Right-of-Way; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

13. Facilities in Conflict. If, during the course of a project, City determines Grantee's facilities are in conflict, the following shall apply:

- a. Prior to City Notice to Proceed to Contractor: Grantee shall, within a reasonable time, but in no event exceeding three (3) months, remove or relocate the conflicting facility. This time period shall begin running upon receipt by Grantee of written notice from City. However, if both City and Grantee agree, the time frame may be extended based on the requirements of the project.
- b. Subsequent to City Notice to Proceed to Contractor: City and Grantee will immediately begin the coordination necessary to remove or relocate the facility. Removal or relocation is to begin no later than seventy-two (72) hours, if practicable, after written notification from City of the conflict.

14. Relocation Delays.

- a. In the event City becomes aware of a potential delay involving Grantee's facilities, City shall promptly notify Grantee of this potential delay. The Grantee shall make every effort to relocate facilities in accordance with Section 13 b.

15. Interference with City Facilities. The Installation, use and maintenance of the Grantee's facilities within the Rights-of-Way and public ways authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its Rights-of-Way and public ways, Rights-of-Way lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used or authorized by City.

16. Interference with Utility Facilities. Grantee agrees not to install, maintain or use any of its facilities in such a manner as to damage or interfere with any existing facilities of another utility located within the Rights-of-Way and public ways of City and agrees to relocate its facilities, if necessary, to accommodate another facility relocation. Nothing in this section is meant to limit any rights Grantee may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.

17. Collocation. To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along City Rights-of-Way and sidewalks for underground plant, Grantee shall make every commercially reasonable effort to collocate compatible facilities within the Rights-of-Way subject to the engineering requirements of the owners of utility poles and other facilities.

18. Safety Requirements.

- a. Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
- b. Grantee shall install and maintain its System and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.
- c. Cable System structures, and lines, equipment and connections in, over, under and upon the Rights-of-Way of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of City or any Person.

**SECTION 4.
DESIGN PROVISIONS**

1. System Construction: Minimum Channel Capacity.
 - a. Grantee shall develop, construct, operate and maintain for the term of this franchise a System providing a minimum capability of delivering 70 analog channels.
 - b. All final programming decisions remain the discretion of Grantee in accordance with this Franchise, provided that Grantee notifies City and Subscribers in writing thirty (30) days prior to any Channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545. Location and relocation of the PEG Channels shall be governed by Section 6 and Exhibit A.
2. Additional Construction and New Installations. Any additional construction or new installations will comply with the technical specifications referenced in this Section and will comply with applicable City and State building and safety codes.
3. Interruption of Service. Grantee shall interrupt Service only for good cause and for the shortest time possible. Such interruption shall occur during periods of minimum use of the System. Subscriber refunds for service interruption will be in accordance with Section 5 of this franchise agreement.
4. Emergency Alert System. Franchisee must install and maintain an emergency alert system in accordance with applicable federal and state law that can override audio and video on all Channels to provide an emergency alert to all Subscribers in the City.
5. Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference

6. Special Testing.

- a. City shall have the right to inspect and test all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System as desired at any time during the term of this Franchise. Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance or for routine verification of Grantee's compliance with FCC technical standards. City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.
- b. Before ordering such tests, Grantee shall be afforded thirty (30) days advance written notice. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which may be the focus of concern. Grantee shall participate and cooperate in such testing and shall not assess City or Subscribers any additional fees or costs associated with time or labor Grantee may incur as a result of its participation in such testing.

7. FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall upon written request of City also be filed with City or its designee within ten (10) days of the conduct of such tests.

8. Annexation. Upon the annexation of any additional land area by the City, if the annexed area is not currently served by a cable operator it will be subject to the other provisions of this Section 4. If the annexed area is served by a cable operator, Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so. Upon the annexation of any additional land area by the City, the annexed area shall be subject to all the terms of this Franchise upon sixty (60) days of written notification by the City to Grantee. A cable operator other than Grantee whose Cable System already passes homes in an annexed area shall not extend its Cable System beyond those homes which it passes at the time the annexation occurs unless it otherwise obtains a franchise from the City.

9. Line Extension.

- a. Grantee shall construct and operate its Cable System so as to provide Service to all parts of its Franchise area as provided in this Franchise and having a density equivalent of forty (40) residential units per one-(1) cable mile of System, as measured from the nearest tap on the Cable System.
- b. Where the density is less than that specified above, Grantee shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge

for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

- c. Any residential and/or commercial unit located within one hundred fifty (150) feet of the nearest tap on Grantee's System shall be connected to the System at the Standard Installation charge. Grantee shall, upon request by any potential Subscriber residing in City beyond the one hundred fifty (150) foot limit, extend Service to such Subscriber provided that the Subscriber shall pay the net additional costs.
 - d. Under Normal Operating Conditions, if Grantee cannot perform Installations within the times specified in applicable customer standards, the Subscriber may request and is entitled to receive a credit equal to the charge for a Standard Installation. For any Installation that is not a free Installation or a Standard Installation, Grantee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Grantee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Grantee is utilizing a phased introduction.
10. Lockout Device. Upon the request of a Subscriber, Grantee shall make available by sale or lease a Lockout Device allowing Channels on the System to be blocked.

SECTION 5. SERVICE PROVISIONS

1. Regulation of Service Rates. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by law.
2. Non-Standard Installations. Grantee shall install and provide Cable Service to any Person requesting other than a Standard Installation provided that said Cable Service can meet FCC technical specifications and all payment and policy obligations are met.
3. Sales Procedures. Grantee shall comply with all lawful state and local consumer protection statutes and ordinances. Grantee shall have the right to market door-to-door during reasonable hours consistent with local ordinances and regulation.
4. Consumer Protection and Service Standards. Grantee shall maintain service and bill payment facilities as per item 8 of this Section. The Grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any

amendments to 47 C.F.R. § 76.309 during the term of this Franchise, that impose higher or additional customer service standards on a cable operator, and shall not contest any decision by the City to enforce the standards set forth herein or such other standards in accordance with Applicable Laws.

a. Cable System office hours and telephone availability:

- i. Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
 - (1) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
 - (2) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.
- ii. Under Normal Operating Conditions, telephone answer time including wait time, shall not exceed thirty (30) seconds when the connection is made. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- iii. Grantee shall acquire equipment to measure compliance with the telephone answering standards above.
- iv. Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- v. Customer service center and bill payment locations will be open at least during Normal Business Hours.

b. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

- i. Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- ii. Excluding conditions beyond the control of Grantee, as defined in Section 12.8 Force Majeure, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to

correct other Service problems the next business day after notification of the Service problem.

- iii. The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
- iv. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- v. If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

c. Communications between Grantee and Subscribers:

i. Notifications to Subscribers:

- (1) Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:
 - (a) Products and Services offered;
 - (b) Prices and options for programming Services and conditions of subscription to programming and other Services;
 - (c) Installation and Service maintenance policies;
 - (d) Instructions on how to use the Cable Service;
 - (e) Channel positions of the programming carried on the System; and
 - (f) Billing and complaint procedures, including the address and telephone number of the City.
- (2) Subscribers will be notified of any changes in rates, programming Services or Channel positions a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other

information required by this Section 5.4(c)(i)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber.

- (3) Grantee will provide an on-line channel line up or "TV Guide" for all subscribers (analog and digital) on an available channel.

ii. **Billing:**

- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (2) In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

iii. **Refunds:** Refund checks will be issued promptly, but no later than either:

- (1) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (2) The return of the equipment supplied by Grantee if Service is terminated.

iv. **Credits:** Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Grantee shall provide City with a quarterly compliance report, which shall describe in detail Grantee's compliance with each term of this section. This report shall include total calls received and total reports of service outages.

5. **Subscriber Contracts.** Upon written request, Grantee shall supply to the City any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

6. **Refund Policy.**

- a. Upon request, Subscribers shall be credited pro rata for service interruptions in accordance with the Grantees refund policy. The City will be notified of any changes in the refund policy subsequent to the adoption of this franchise.
 - b. In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing. Refund checks will be issued promptly, but no later than thirty (30) days after the return of the equipment supplied by the Grantee if Cable Service is terminated.
7. Late Fees. For purposes of this section any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber for late payment of a bill is a late fee, and shall be applied in a manner consistent with State Law.
8. Local Service Policy.
- a. Grantee shall maintain a convenient location within the City for subscriber inquiries, bill payment and equipment transfers until such a time that these services are no longer required. Subsequently a location within a reasonable distance of the City shall be maintained for receiving subscriber inquiries, bill payments, and other services. The location shall be open a minimum of forty (40) hours per week. In addition, Grantee shall maintain a drop box within the Service Area for receiving subscriber payments after hours.
 - b. Payments at Grantee's drop box location shall be deemed received on the date such payments are picked up by Grantee which shall occur no less than twenty-four (24) hours after each and every due date for Subscriber bills.

SECTION 6. ACCESS CHANNEL(S) PROVISIONS

1. Grantee Support for PEG Access. Grantee shall provide the following support for PEG access usage within the Service Area:
- a. Provision of the Channels designated in Exhibit A of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit A.
 - b. Capital support of PEG programming to the extent specified in Exhibit A of this Agreement.
 - c. Provision of free public building Installation and Cable Service as specified in Exhibit C.
2. Compliance with Federal Law. Grantee and City agree that the PEG access support fee referenced in Exhibit A are not intended to be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations are not

intended to be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 8 hereof or (ii) part of the Franchise Fees to be paid to City by Grantee pursuant to Section 8 hereof. In accordance with applicable Federal Law, Grantee shall itemize the PEG fee on subscriber billing statements.

SECTION 7. OPERATION AND ADMINISTRATION PROVISIONS

1. Administration of Franchise. The City shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operation under the Franchise; provided, however, that the City Council shall retain the sole authority to take enforcement action pursuant to this Franchise.
2. Franchise Fee.
 - a. During the term of the Franchise, Grantee shall pay quarterly to City a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues, or such other amounts as are subsequently permitted by federal statute.
 - b. Any payments due under this provision shall be payable quarterly. The payment shall be made within forty-five (45) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation. In the event that a Franchise Fee payment or other sum due is not received by the City on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the maximum rate permitted under state law, or twelve percent (12%) if no such rate is legally specified or as otherwise allowed by applicable law.
 - c. All amounts paid shall be subject to audit and recomputation (but no more than one audit within in a 36-month period) by City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Grantee's books and records pursuant to Section 8.6 of this Franchise and discover that Grantee has underpaid Franchise Fee payments by five percent (5%) or more, Grantee shall assume all reasonable documented costs of such audit in an amount, not to exceed \$5,000.
 - d. The Grantee shall provide during any audit, the methodology used to allocate revenues for franchise fee purposes for "Bundled Services" or other discounted rate programs.
 - e. Discounted Rates. To the extent discounts reduce revenues includable for purposes of calculating franchise fees, the Grantee may not unfairly or unlawfully allocate discounts for bundled services for the purpose of evading payment of franchise fees to the City.

3. Not Franchise Fees. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to City pursuant to this section shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee pursuant to this Franchise and that the Franchise Fees provided for in this section of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which Grantee shall be required to pay to City and/or to any other governmental authority, all of which shall be separate and distinct obligations of Grantee.
4. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Grantor agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representative, and agents of the Grantor and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. In the event that the Grantor receives a request under a state "sunshine", public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Grantor shall notify Grantee of such request and cooperate with Grantee in opposing such request
5. Reports and Maps to be Filed with City.
 - a. City and Grantee shall mutually agree, at the times and in the form prescribed, on such other reasonable reports with respect to Grantee's operations pursuant to this Franchise.
 - b. Upon written request, Grantee shall provide the City information on the Grantees cable plant and facilities necessary to de-conflict other uses of the Public-Right-of way. Upon written request, the Grantee and the City shall meet to determine a mutually agreeable format for such data.
6. Periodic Evaluation.
 - a. City may request evaluation sessions at any time during the term of this Franchise upon thirty (30) day written notice to Grantee.
 - b. Topics which may be discussed at any evaluation session may include System performance, access channels and facilities, Subscriber basic rates, and customer complaints.

SECTION 8.
GENERAL FINANCIAL AND INSURANCE PROVISIONS

1. Performance Bond.

- a. At the time of acceptance of this Franchise, Grantee shall deliver to City a performance bond, in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00).
- b. The performance bond shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this section, in payment for any monies owed by Grantee to City or any Person pursuant to its obligations under this Franchise, or in payment for any damage incurred by City or any Person as a result of any acts or omissions by Grantee pursuant to this Franchise.
- c. In addition to recovery of any monies owed by Grantee to City or any Person or damages to City or any Person as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the Performance Bond the penalties enumerated below.

2. Liquidated Damages.

- a. Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Grantee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach.
- b. Prior to assessing any liquidated damages, the Franchising Authority shall mail to the Grantee a written notice by certified or registered mail of the alleged violation and the proposed liquidated damage, specifying the violation at issue. The Grantee shall have forty-five (45) days from the date of receipt of the written notice to cure or commence to cure, as is appropriate depending on the nature of the alleged violation, or to file a written response refuting the alleged violation or explaining why additional time for cure is necessary. In the case of breaches of requirements measured on a monthly, quarterly or longer period (such as customer service standards), Grantee's cure period shall be no less than one such period.

- c. The Franchising Authority may not assess any liquidated damage if the Grantee has reasonably responded to the complaint or cured or commenced to cure, as may be appropriate, the violation within a reasonable time frame not to exceed forty-five (45) days following receipt of written notice from the Franchising Authority, unless some other cure period is approved by the Franchising Authority. In the event Grantee fails to cure or commence to cure, or fails to refute the alleged breach, the Franchising Authority may assess liquidated damages and shall inform Grantee in writing of the assessment. Grantee shall have thirty (30) days to pay the damages.
- d. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.
- e. Grantee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Grantee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.
- f. In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other remedies.
- g. Pursuant to the requirements outlined in the foregoing Sections, liquidated damages shall not exceed the following amounts:
 - i. For failure to provide data, documents, reports and information as required by this Franchise fifty dollars (\$50) per day per each separate violation not to exceed \$2,000 for any single violation.;
 - ii. For failure to test, analyze and report on the performance of the Cable System as required by this Ordinance, one hundred dollars (\$100) per day not to exceed \$5,000 for any violations;
 - iii. For failure to comply with PEG Access requirements outlined in Section 6, two hundred and fifty dollars (\$250) per day not to exceed \$7,000 for any violation.;
 - iv. For violation of customer service standards to include stated standards for installations, correction of service interruptions and failure to provide stated credits, the penalty shall be two hundred and fifty dollars (\$250.00) per occurrence.
 - v. For failure to answer Subscriber calls as required by Section 5 of the Cable Ordinance in, any quarter where the Grantee performs equal to or greater than eighty-five (85%) and less than ninety percent (90%), the

Grantee shall pay the Grantor five hundred dollars (\$500); in any quarter where the Grantee performs equal to or greater than seventy-five percent (75%) and less than eighty-five percent (85%), the Grantee shall pay the Grantor one-thousand dollars (\$1,000); in any quarter where the Grantee performs equal to or greater than sixty-five percent (65%) and less than seventy-five percent (75%), the Grantee shall pay the Grantor three-thousand dollars (\$3,000); and in any quarter where the Grantee performs less than sixty-five percent (65%), the Grantee shall pay the Grantor five thousand dollars (\$5,000).

3. Liability Insurance.

- a. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and Three Million Dollars (\$3,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any works compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.
- b. Grantee shall submit to City documentation of the required insurance, including a copy of the policy showing that the City is an additional insured, as well as all properly executed endorsements.

4. Indemnification.

- a. The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

5. Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

- a. In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:
 - i. Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;
 - ii. Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - iii. Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

SECTION 9.

TRANSFER, CHANGE OF CONTROL OR REVOCATION OF FRANCHISE

1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No change in control of the Grantee, defined as an acquisition of 50% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the

Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City does not act on the matter within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

2. The Grantee reserves all Revocation Rights as defined under applicable Federal Laws and regulation. Such applicable law will define the process to be used by the Grantee.

SECTION 10. PROTECTION OF INDIVIDUAL RIGHTS

1. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability. Grantee shall comply at all times with all other Applicable Laws, and all executive and administrative orders relating to nondiscrimination.
2. Subscriber Privacy. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 11. UNAUTHORIZED CONNECTIONS AND MODIFICATIONS

1. Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any unauthorized connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System or receive Services of the System without Grantee's authorization.
2. Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, or corporation to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.
3. Penalty. Any firm Person, group, company, or corporation found guilty of violating this section may be fined not less than Twenty and No/100 Dollars (\$20.00) and the costs of the action nor more than Five Hundred and No/100 Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

SECTION 12.
MISCELLANEOUS PROVISIONS

1. Franchise Renewal. Any renewal of this Franchise shall be performed in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.
2. Work Performed by Others. All applicable obligations of this Franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of this Franchise, however, in no event shall any such subcontractor or other performing work obtain any rights to maintain and operate a System or provide Cable Service. Grantee shall provide notice to City of the name(s) and address(es) of any entity, other than Grantee, which performs substantial services pursuant to this Franchise.
3. Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.6 or at any other time if City and Grantee mutually agree that such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.
4. Compliance with Federal, State and Local Laws.
 - a. If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.
 - b. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision, which had been held invalid or modified, is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.
5. Nonenforcement by City. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure or delay of City to enforce prompt compliance. City may only waive its rights hereunder by expressly so stating in

writing. Any such written waiver by City of a breach or violation of any provision of this Franchise shall not operate as or be construed to be a waiver of any subsequent breach or violation.

6. Rights Cumulative. All rights and remedies given to City by this Franchise or retained by City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by City and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.
7. Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.
8. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (include termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as availability of materials or qualified labor to perform the work necessary.

SECTION 13.

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

1. Publication, Effective Date. Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 13.2.
2. Acceptance.

- a. Grantee shall accept this Franchise within thirty (30) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes; provided, however, this Franchise shall not be effective until all City ordinance adoption procedures are complied with and all applicable timelines have run for the adoption of a City ordinance. In the event acceptance does not take place, or should all ordinance adoption procedures and timelines not be completed, this Franchise and any and all rights granted hereunder to Grantee shall be null and void.
- b. Upon acceptance of this Franchise, Grantee and City shall be bound by all the terms and conditions contained herein.
- c. Grantee shall accept this Franchise in the following manner:
 - i. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
 - ii. With its acceptance, Grantee shall also deliver any grant payments, performance bond and insurance certificates, and guaranties, as required herein, that have not previously been delivered.

Passed and adopted by the City Council this 5TH day of July 2005.

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

CALIFORNIA / COLORADO / FLORIDA / OREGON, INC.

Date: July 26, 2005

By: [Signature]
Its: Senior Vice President

~~SWORN TO BEFORE ME this
____ day of _____, 2005.~~

~~NOTARY PUBLIC~~

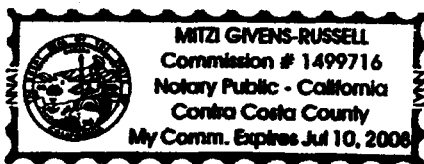
~~See attached acknowledgment~~

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa } ss.

On July 26, 2005, before me, Mitzi Givens-Russell,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Richard Germano,
Name(s) of Signer(s)



Place Notary Seal Above

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mitzi Givens-Russell
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Cable Television Franchise Ordinance

Document Date: June 2005 Number of Pages: 39

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Richard Germano

- ☐ Individual
☒ Corporate Officer — Title(s): Senior Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:
Comcast of California /
Colorado / Florida / Oregon,
Inc

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT A – GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

Grantee shall make three (3) video Channels available exclusively for PEG use ("PEG Channels"). The three (3) Channels shall be made available by Grantee for shared PEG access use in accordance with applicable law. One (1) Channel is currently being provided and a second will be made available upon the City's request with 90 days written notice. One (1) additional Channel for PEG use (for a total of three (3) PEG Channels) shall be made available with the following triggers are met: the existing PEG Channels must be programmed at least eight (8) hours a day with non-repetitive, locally-produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The City must provide Grantee with written, detailed documentation evidencing that the usage meets the threshold requirements for each channel. Grantee shall have 120 days to provide the requested additional capacity. Once the threshold is met and the additional capacity given, each of the initial PEG Channels must maintain the threshold requirement. If any of the initial PEG Channels fail to meet the threshold for four (4) consecutive months, the additional PEG capacity may be reclaimed by Grantee upon sixty (60) calendar days written notice. Under no circumstances shall the City lose the right to its initial PEG capacity.

2. PEG OPERATIONS

City may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the expenses of supporting the PEG Channels. Throughout the term of this Franchise Grantee shall provide City with an audio feed of either a local radio station or music service to provide background sound for the City's character generated bulletin board to be cablecast on one (1) or more of the PEG Channels.

3. RELOCATION OF PEG CHANNELS

Grantee shall provide City and all Subscribers with at least sixty (60) days prior written notice of any legally required relocation. In the event any PEG access Channel(s) is relocated, Grantee shall reimburse City up to Two Thousand and Five Hundred Dollars (\$2,500.00) for all reasonable costs associated with such move including change of letterhead, promotion of new Channel location and promotional spots for the new location and inform Subscribers of the new Channel location.

4. PROMOTION OF PEG ACCESS

To the extent permitted by Grantee's billing process, Grantee may allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City not to exceed Grantee's cost, no less frequently than once per year upon the written request of the City and at such times that the placement of such materials would not materially and adversely effect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee may also make available PEG access information provided by City in Subscriber packets at the time of Installation and at the counter in the System's business office serving the Service Area. Grantee shall also distribute, at no charge to City, through advertising insertion equipment, fifteen (15) weekly promotional and awareness commercial spots, on a "run of schedule" basis, produced at the City's cost and submitted by the City in a format compatible with such advertising insertion equipment once Grantee has acquired and activated such capability. Grantee shall also include a listing of the known programming to be cablecast on PEG access Channels in or on any electronic program guide of Services for the Cable System.

6. PEG ACCESS SUPPORT

Grantee shall provide City with capital grants, to be used for Public, Educational, and Government access capital expenses according to the following schedule: upon acceptance of franchise, \$50,000 for construction of a PEG facility and \$240,000 for acquisition equipment to create a PEG studio potentially in a partnership with the Milpitas Unified School District; an annual technology grant of \$50,000 in the years 2005, 2006, 2007, 2008 and 2009 to be used to meet the capital needs of the educational access facility. Total PEG capital grants to total \$540,000. Any and all payments by Grantee to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542). The Grantee shall reserve its right to pass the capital grant through to customers as a line-item "PEG Fee" on subscriber billing statements.

Grantee will relocate the current head end feed for the Milpitas Unified School District from the District Board Room to Building 800.

EXHIBIT B - SERVICE TO PUBLIC AND PRIVATE BUILDINGS

1. Grantee will provide the following services to Public facilities:

- a. Whenever Grantee's cable lines are within 150 feet, a single service cable shall be provided without any charge for connection and without monthly Service charge for one (1) Standard Cable Service to a demarcation point within the institution nearest to the cable distribution plant. Interior wiring for additional outlets will be provided by the organization. Service will be provided to the following facilities:**

- i. City Hall**
- ii. Fire Stations 1,2,3,4**
- iii. Public Works/Police Building**
- iv. Sports Center**
- v. Cracolice Building**
- vi. New Senior Center**
- vii. New Library**
- viii. Public Schools**



August 31, 2017

VIA E-MAIL AND REGULAR MAIL

Mr. Mike Luu
Information Services Director
City of Milpitas
1265 N. Milpitas Boulevard
Milpitas, CA 95305-5707

Re: Milpitas Customer Service Center

Dear Mr. Luu:

Thanks for taking the time to meet with me to discuss the status of the Milpitas customer service center. As we discussed, Comcast is in the process of opening a large new Xfinity store located at 1065 E. Brokaw Road in San Jose and is looking to transfer our operations from the current Milpitas customer service center at 597 E. Calaveras Boulevard. The new store will have substantially more space and greater ability to service our customers, as we are adding more customer representatives and store management. The additional space is necessary in order to accommodate our recent addition of mobile services to our expanding portfolio of products and services. Customers using the new San Jose facility will be able to see and test our services, work with a representative who can demonstrate our products and show customers how to use the features and services, and purchase equipment and accessories from the new center, such as phones, tablets, cables, home security items and other related products. The new customer service center is located just 5.5 miles from the existing customer service center and will be open Monday through Sunday with hours similar to those at the Milpitas center. Customers may also of course use any of the other customer service centers in the area, such as those in Sunnyvale or Union City.

The customer service environment has changed dramatically over the years and we provide numerous additional resources for customers to manage their accounts and services. Customers can pay their bills on-line, order equipment and have it shipped to them or even change their services through www.xfinity.com. In addition, should a customer wish to return equipment, we can ship a prepaid box to the customer's home, or they can simply drop off equipment at the closest UPS shipping location. These options are available on-line and via our toll-free customer service number, and are available 24/7. Finally, customers can pay their bills at the closest CVS or 7-11.

Mr. Mike Luu
August 31, 2017
Page 2

We understand that the store closing and relocation will be an adjustment for some residents; however, we firmly believe that the benefits of the new customer service center will be readily appreciated once they've had the opportunity to use it.

We currently have notifications up at the Milpitas customer service center informing customers of this move. In addition, we will be mailing postcards to all customers who have used the Milpitas customer service center in the last 180 days notifying them of this change, as well as running a bill message to all Milpitas customers starting in September and running through October.

We will be following up separately to provide further information regarding Internet Essentials and the work we have done in the Milpitas community. We are excited that the Internet Essentials Senior Pilot has been expanded to the Santa Clara County area and look forward to partnering with the City to assist the community in gaining access to the internet and reducing the digital divide.

Please give me a call at your earliest convenience should you have any other concerns that need to be addressed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lee-Ann Peling". The signature is fluid and cursive, with the first name "Lee" and last name "Peling" clearly distinguishable.

Lee-Ann Peling
Director of Franchise Operations
California Region

Cc: Eliren Pasion, City of Milpitas
Lennies Gutierrez, Comcast

PLEASE NOTE:

This copy of Ordinance No. 48.21 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 48.21

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 200 OF TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO SOLID WASTE MANAGEMENT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, the current franchise agreement for solid waste collection and disposal has been in place since September 2, 1986, as amended from time to time, and will terminate on December 1, 2017; and

WHEREAS, service providers operating under two new franchise agreements for solid waste collection and solid waste disposal, respectively, will begin operations on December 1, 2017 and

WHEREAS, the Milpitas Municipal Code provisions related to solid waste management are tailored to correlate with the current franchise agreement; and

WHEREAS, the Milpitas Municipal Code provisions relating to solid waste management must be updated to correlate with the terms and conditions of the two new solid waste franchise agreements.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE CHAPTER 200, TITLE V

Chapter 200 of Title V of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

Chapter 200—

SOLID WASTE MANAGEMENT*

Sections:

~~* Prior ordinance history: Ords. 48, 48.1, 48.2, 48.3, 48.4, 48.5, 48.6, 48.7, 48.8, 48.9, 48.10, 48.11.~~

<u>V-200-1</u>	<u>General Provisions</u>
<u>V-200-2</u>	<u>Definitions</u>
<u>V-200-3</u>	<u>Keeping or Accumulating Solid Waste</u>
<u>V-200-4</u>	<u>Collection and Disposal</u>
<u>V-200-5</u>	<u>Authorized Contractors</u>
<u>V-200-6</u>	<u>Authorized Contractors' Rates, Charges and Fees</u>
<u>V-200-7</u>	<u>Manner of Collection, Removal and Transportation</u>
<u>V-200-8</u>	<u>Waste Disposal</u>
<u>V-200-9</u>	<u>Enforcement and Penalties</u>
<u>V-200-10</u>	<u>Disaster Operations</u>
<u>V-200-11</u>	<u>Interruption of Service by Labor Dispute</u>

Section 1 —General Provisions

~~V-200-1.10—~~ Declaration of Policy

It is hereby declared to be in the public interest and in the interest of all the residents of the City of Milpitas that the accumulation, preparation, storage, collection, transportation and disposal or processing of Solid Waste, ~~recyclables and yard trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris in the City of Milpitas be handled in such a manner so as to:

- (a) Prohibit the harboring and breeding of rodents and insects;
- (b) Reduce pollution of the air caused by burning, fermentation or putrification of such materials;
- (c) Prevent the spread of disease;
- (d) Reduce the hazards of fire and the prevention of unsightliness resulting in the depreciation of property values and the comfortable enjoyment of life; and
- (e) Reduce the amount of ~~solid~~ waste disposed in landfills.

This Chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Milpitas and to establish an integrated waste management system that will enable the City to meet the mandated goals for reduced disposal tonnage ~~of twenty-five percent (25%) by the year 1995 and fifty percent (50%) by the year 2000~~ as required by Public Resources Code Sections 42000 et seq., also known as the Integrated Waste Management Act.

V-200-1.20— Declaration of Purpose and Object

The purposes and object of this Chapter are to accomplish the foregoing results, and the provisions thereof shall be liberally construed so as to give full effect to the accomplishment of such purposes and object.

V-200-1.30— Mandatory Service Charge

The charges levied pursuant to this Chapter are for the privilege of having Solid Waste, ~~Recyclables, and Yard Trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris collected and are mandatory, unless an exemption is granted pursuant to Section 3 of this Chapter.

V-200-1.40—~~Solid~~ Waste Service Design Requirements

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which shall accommodate the Solid Waste, Recyclable Material, and Organic Material loading anticipated and which shall allow for efficient and safe waste removal or collection. Solid waste ~~and recycling,~~ Recyclable Material, and Organic Material collection shall be accommodated on-site. The design shall comply with City requirements.

Section 2 —Definitions

V-200-2.10— Definitions

The definitions contained in this Section shall govern the construction of this Chapter, unless the context otherwise requires.

- (a) Administrator. The "Administrator" means the City Manager or his or her designee.
- (b) Agent. The word "agent" means a person, designated by the owner, as responsible for procuring and maintaining Solid Waste, ~~recyclables and yard trimmings~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris Collection services.
- (c) Authorized Contractor. The words "Authorized Contractor" means any person or persons, or the agents or employees thereof, with whom CITY shall have duly contracted as hereinafter provided, or to whom CITY shall have issued a permit, to collect, remove, transport, recycle, or dispose of any or all Solid Waste, ~~recyclables, or yard trimmings produced~~Recyclable Materials, Organic Materials, and Construction & Demolition Debris generated, kept, or accumulated in the City.
- (d) Bin. "Bin" means a Container with ~~the~~ capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a ~~front-end loading~~front-end loading Collection vehicle.

- (e) Bulky Item. The phrase "Bulky Item(s)" means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles, large auto parts, or trees.
- (ef) Cart(s): "Cart(s)" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has a capacity of ~~32~~38, 45, 64, or 96 gallons. (or similar volumes). A "split-Cart" refers to Carts with vertical dividers designed to provide for separate placement in the Cart of two types of materials.
- (fg) City. The word "City" means and includes all the territory lying within the municipal boundaries of the City of Milpitas as presently existing together with all territory, which may be added thereto by annexation or otherwise. When capitalized, "CITY" means the City of Milpitas, a municipal corporation organized under the laws of the State of California, and its divisions, departments and agencies.
- (gh) Centralized Collection Service. The phrase "centralized collection service" means the level of service provided to a multiple family development that provides a designated collection point for ~~garbage and recycling services~~Solid Waste, Recyclable Materials, Organic Materials, and Construction & Demolition Debris in roll-off compactors. It is the responsibility of the Property Management of the development to provide move-in and semi-annual recycling program information to multi-family residents.
- ~~(h) Container(s). The word "Container(s)" means Front-end Loader Bins, Carts, Compactors, and Roll-off Containers.~~
- (i) Collect or Collection (or any variation thereof). The words "Collect", "Collection", or any variation thereof, mean the act of collecting Solid Waste, Recyclable Materials, Organic Materials, C&D, Bulky Items, and other material at the place of generation in City.
- (ij) Compactor. The word "Compactor" means a mechanical apparatus that compresses materials ~~and/together with the Container that holds the compressed materials~~ or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two ~~to four~~(2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ~~6~~ten (10) to fifty (50) cubic yard ~~Debris~~Drop Box Compactors serviced by roll-off Collection vehicles.
- (k) Composting or Compost (or any variation thereof). The words "Composting" or "Compost" include a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.
- (l) Construction and Demolition Debris, C&D Debris, or C&D. The terms "Construction and Demolition Debris", "C&D Debris", or "C&D" include discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste. Source Separated Recyclable C&D is a subset of C&D. Mixed C&D is C&D that is not Source Separated.
- (m) Container(s). The word "Container(s)" means Bins, Carts, Compactors, and Drop Boxes.
- (jn) Curbside Service. The phrase "Curbside Service" means individual collection services for ~~garbage, recycling and yard trimmings recycling~~Solid Waste, Recyclable Materials, Organic Materials, and C&D as typically provided to single-family homes, duplexes, townhomes and mobile homes. See Section V-200-4.20 for specific set-out requirements for customers receiving Curbside Service.
- (o) Discarded Materials. The phrase "Discarded Materials" means Solid Waste, Recyclable Materials, Organic Materials, and C&D placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Authorized Contractor, excluding Excluded Waste.
- (p) Disposal or Dispose (or any variation thereof). The words "Disposal" or "Dispose" mean the final disposition of Solid Waste at a disposal facility.
- (kq)~~Debris~~ Drop Box. The phrase "~~debris~~Drop Box" means an open-top Container with a capacity of ~~5~~ten (10) to fifty (50) cubic yards ~~and that is~~ serviced by a roll-off Collection vehicle.
- ~~(l) Front-end Loader Bin. The phrase "Front-end Loader Bin" means a container with the capacity of approximately one to eight cubic yards and with a hinged lid that is serviced by a front end loading vehicle.~~

- (r) Excluded Waste. The phrase "Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Authorized Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Authorized Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Authorized Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- (s) Food Scraps. The phrase "Food Scraps" means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking, or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.
- (t) Generator. The word "Generator" means any Person whose act or process produces Solid Waste, Recyclable Materials, Organic Materials, or C&D as defined in the Public Resources Code, or whose act first causes waste to become subject to regulation.
- (mu) Hazardous Waste. The phrase "hazardous waste" means hazardous materials, as defined by Title V, Chapter 3 of the Milpitas Municipal Code, Hazardous Substances, as defined in 42 U.S.C. Section 9601 (14), Designated Wastes, as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations, biohazardous and any other wastes which are not nonhazardous solid waste, as defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations. It also means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.
- (hv) Health Officer. The phrase "Health Officer" means the Santa Clara County Health Officer, or his or her designee(s) acting as the Health Officer of the CITY.
- (ew) Medium and High Density Developments. "Medium and High Density Developments" are defined in the City's General Plan as follows:
- (1) Medium Density—"Medium Density" housing may include single-family attached and semi-attached houses and duplexes.
 - (2) High Density—"High Density" housing may include attached row houses to triplexes and four-plexes, stacked townhomes, and walk-up garden apartments.
 - (3) Very High Density—"Very High Density" housing may include ~~attached~~-row houses ~~and~~to townhouses to lofts and stacked flats with structured parking.
 - (4) Mixed Use—Mixed-use may include commercial offices, retail ~~and~~ services, ~~High Density~~high-density residential, ~~and~~ public, ~~and~~/quasi-public uses. Mixed use buildings can contain a combination of residential and commercial uses.
- (px) Non-putrescible Waste. The phrase "Non-putrescible Waste" means the component of the ~~solid~~-waste ~~stream~~, which is not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions.
- (qv) Occupant. The word "occupant" means ~~individual(s) occupying any premise, business establishment, industry, or other property for the purpose of residing at that location~~the Person who occupies a Premises.
- (z) Organic Materials. The phrase "Organic Materials" means those Yard Trimmings and Food Scraps that are specifically accepted at the applicable Approved Facilities (as defined in the contract between Authorized Contractor and CITY). No discarded material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste, Recyclable Material, and C&D.

- (~~faa~~) Person. The word "~~person~~" ~~includes~~ Person(s) means any individual, firm, association, organization, partnership, business corporation, trust, joint venture, ~~corporation, company, state, county, city, or entity;~~ ~~whether acting as principal, agent or officer, servant or employee, for himself, herself, itself or for any other person. The word "person" includes the masculine, feminine, and plural forms.~~ or public entity.
- (~~sab~~) Premises. The word "Premises" means ~~and includes~~ any land; or building or structure in the City where any Solid Waste, ~~recyclables, or yard trimmings are produced, kept, deposited, placed or accumulated. The word "premises" extends to and includes, but is not limited to, any agricultural, industrial, commercial or residential land, building or structure and without regard to ownership or use by a profit or nonprofit organization or institution.~~ Recyclable Materials, Organic Materials, or C&D are generated or accumulated.
- (~~t~~) Producer. The word "producer" means ~~any person, firm or entity that creates or owns solid waste, recyclables, or yard trimmings or the materials from which they are derived, prior to collection or sale.~~
- (~~ac~~) Processing. The word "Processing" means to prepare, treat, or convert through some special method.
- (~~uad~~) Putrescible Waste. "Putrescible Waste" means the component of the ~~solid~~ waste stream that is likely to become putrid. It includes but is not limited to wastes that contain Organic Materials such as food wastes or wastes from animal or vegetable origin.
- (~~v~~) Recyclables. The word "recyclables" or the phrase "recyclable materials" means ~~materials which through collection, processing, sorting, cleansing, treating, reconstituting, resale or non-landfill disposition, may be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products, including but not limited to material types such as newspapers, white paper, mixed paper, corrugated cardboard, glass, polyethylene terephthalate ("PET"), high density polyethylene ("HDPE"), polystyrene foam, wood, bi-metal cans, aluminum cans, ferrous metals, non-ferrous metals, motor oil, or other materials as may be identified from time to time by CITY.~~
- (~~ae~~) Recyclable Materials. The phrase "Recyclable Materials" means those discarded materials that Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Authorized Contractor, and that are at least ninety percent (90%) Recyclable and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Solid Waste, Organic Materials, and C&D. Recyclable Materials to be Collected from Single-Family and Multi-Family Premises include, at a minimum, magazines, catalogs, phone books, shredded paper (placed in paper bags for collection), envelopes, junk mail, corrugated cardboard, brown paper grocery bags, mixed or colored paper, paperboard, paper egg cartons, office ledger paper, white plastic grocery bags, glass bottles and jars, food (bimetal) and aluminum cans, newspaper, and plastic containers #1-7 excluding #6, polystyrene in all forms. Recycle Materials to be Collected from Commercial Generators, includes at a minimum, white paper, computer paper, copy paper, fax paper, carbonless forms, envelopes (with or without windows), colored, white, and manila file folders, laser-printed paper, junk mail, newspapers, magazines, phone books, glossy paper, corrugated cardboard, chipboard, shredded paper, bi-metal cans, aluminum, tin, glass bottles and jars, and plastic containers #1-7 excluding polystyrene (#6) in all forms. For Residential and Commercial Customers with Cart service, Recyclable Materials are Collected using a split-Cart that segregates fibers and containers.
- (~~waf~~) Recycle or Recycling. The ~~phrase~~ words "Recycle" or "Recycling" ~~means~~ mean the process of ~~collecting,~~ sorting, cleansing, treating ~~or, and~~ reconstituting ~~solid~~ at a Processing Facility waste materials, ~~and that would otherwise be Disposed of at a landfill for the purpose of returning them such materials to the economic mainstreameconomy~~ in the form of raw ~~material~~ materials for new, reused, or reconstituted products.
- (~~ag~~) Reusable Materials. The phrase "Reusable Materials" means items that are capable of being used again with no or minimal Processing.
- (~~x~~) Recycling Container. The phrase "recycling container" means ~~the container provided by an authorized contractor which shall only be used for the purpose of collecting recyclables and presenting them for collection to an authorized contractor.~~
- (~~y~~) Roll-Off Container. "Roll-Off Container" means ~~an open top debris box for disposal of solid waste or recyclable materials serviced by a roll-off vehicle.~~
- (~~zah~~) Scrap Wood. The phrase "Scrap Wood" means clean, unvarnished, unpainted, used wood.

(~~aa~~ai) Solid Waste. The phrase "Solid Waste" means ~~all putrescible and nonputrescible nonhazardous solid, semi-solid and liquid discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which are:~~

~~(1) Not hazardous wastes or biohazardous wastes;~~

~~(2) Fall within solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of nonhazardous Solid Waste, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations; are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste.~~

~~(3) Are produced, generated or accumulated in the City or by CITY; and~~

~~(4) Are not designated as recyclable materials in an agreement between City and an authorized contractor or are not designated yard trimmings.~~

Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of ~~hazardous substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following~~ waste of a type and amount normally found in Residential Solid Waste after implementation of ~~a program~~programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste ~~generated in households, in accordance with Sections~~in compliance with Section 41500 and 41802 of the California Public Resources Code, ~~as may be amended from time to time. For the purposes of this Ordinance, Solid Waste means the portion of the waste stream commonly referred to as "garbage" or "trash" and which is generally disposed of in landfills. When the term "waste" is used in this Ordinance, it means all types of waste including Solid Waste, Recyclable Materials, Organics Materials, and/or C&D.~~

~~(ab) Solid Waste Containers. The phrase "solid waste containers" means all solid waste containers described in Section V-200-3.30.~~

(aj) Source Separated. The phrase "Source Separated" means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

(ak) Source Separated Recyclable C&D. The phrase "Source Separated Recyclable C&D" means C&D materials which are Source Separated by the Customer or Generator and which have a Processing residue level of less than ten percent (10%) by weight.

~~(ae)~~al) Stable Matter. The phrase "stable matter" means and includes all manure and other waste matter normally accumulated in and about a stable or any animal, livestock or poultry enclosure and resulting from the keeping of any animal, poultry or livestock.

~~(ad)~~am) Yard Trimmings. The phrase "yard trimmings" means ~~all materials, containing not less than ninety five percent (95%) by weight per load plant debris, including grass clippings, those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, weeds, branches, brush and tree trunks, as well as other forms~~branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste ~~generated from landscapes and gardens.~~ ~~(ae) Yard Trimmings Container. The phrase "yard trimmings container" means an authorized contractor supplied or approved wheeled cart with a capacity of up to ninety six (96) gallons and used for the collection of yard trimmings.~~are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Authorized Contractor-provided Container.

Section 3 –Keeping or Accumulating ~~Solid~~ Waste

V-200-3.10– General Requirement

No Person shall keep or accumulate, or permit to be kept or accumulated, within or upon any premises in the City, owned, leased or rented by, or in the possession or under the control of such Person, any ~~solid~~ waste of any kind, except in accordance and compliance with and as authorized by the provisions of this Chapter.

The responsibility for proper keeping, accumulating and delivery of Solid Waste, ~~recyclables and/or yard trimmings~~Recyclable Materials, Organic Materials, and/or C&D to an Authorized Contractor in accordance and

compliance with the provisions of this Chapter shall be on the ~~producer~~Generator thereof and the owner and occupant of the Premises within or upon which the same has been ~~produced~~generated.

V-200-3.20— Owner Responsible for Solid Waste, ~~Recyclables, and Yard Trimmings~~Recyclable Materials, Organic Materials, and C&D Collection Service

The owner, agent, and/or occupant of any Premises shall subscribe to and pay for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection service rendered to such Premises by an Authorized Contractor and shall maintain at a location in accordance with the provisions of this Chapter, ~~a~~Containers for Solid Waste, ~~recycling and/or yard trimmings container(s)~~Recyclable Materials and/or Organic Materials, where applicable, in accordance with the provisions of this Chapter.

Without limitation to the provisions of Section V-200-9 of this Chapter, the owner, agent and/or occupant of the Premises has an obligation to pay for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection services. In the case of those Premises receiving service at the single-unit service level, ~~as defined in the agreement for the collection and disposal of solid waste between City and Browning Ferris Industries of California, Inc., dated September 2, 1986 and as amended thereafter,~~ such obligation runs directly to City, and thus the owner, agent, and/or occupant shall be liable to City for Solid Waste, ~~recyclables, and yard trimmings~~Recyclable Materials, and Organic Materials Collection service charges.

A residential Premises is occupied when a Person takes or holds possession of the Premises for use as a permanent or temporary dwelling. For the purpose of determining whether a residential Premises was occupied during periods when Solid Waste, Recyclable Materials, and Organic Materials Collection service was provided to such Premises, a residential Premises shall be presumed to have been so occupied unless evidence is presented that water utility service was not being provided to such Premises during such periods. Such presumption shall be rebutted only by water utility records showing that the premises was then unoccupied.

An industrial or commercial Premises is occupied when a building occupancy permit is issued. An agricultural Premises is occupied when a person takes or holds possession of the Premises for agricultural purposes.

For utility accounts opened on or after June 2, 2006 serving residential Premises with single-family curbside services connected to a common water meter installed to provide water to two or more residential units, the owners shall designate an agent who shall be responsible for payment to the City for water and curbside services on behalf of the owners. Nothing in this section is intended to prevent an arrangement, or the continuance of an existing arrangement, under which payments for collection service are made by a tenant or tenants, or any agent, on behalf of the owner. Any such arrangement, however, will not affect the owner's obligation as provided herein.

V-200-3.30— Solid Waste, Recyclable Materials, Food Scraps, and Yard Trimmings Containers Required, Description

Any and all Solid Waste, Recyclable Materials, Food Scraps, and Yard Trimmings produced, kept or accumulated within or upon any Premises in the City shall be placed without delay in ~~solid waste~~ Containers ~~described in this Section~~ and shall be kept and maintained within such Containers and upon such Premises, until the contents thereof are ~~disposed of~~Collected or otherwise handled in accordance with the provisions of this Chapter. ~~Solid~~ Waste cans, plastic or polyethylene disposal bags, or Authorized Contractor-supplied or approved Containers shall be authorized ~~solid~~ waste containers for use in the City and shall meet the standards for each such container as established in this Section.

Each container shall:

- (a) Be constructed of metal, plastic or other substantial materials;
- (b) Be of sufficient strength or rigidity to hold without collapsing all ~~solid~~ waste deposited and kept therein;
- (c) Be of sufficient strength and rigidity to prevent it from being broken or crushed under ordinary conditions of use;
- (d) Be ~~leakproof~~leak-proof and ~~flyproof~~fly-proof;
- (e) Be free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the container;
- (f) Have a close-fitting cover.

In addition to the foregoing, ~~containers~~Carts supplied by the Authorized Contractor shall be of approximately ninety-six (96), sixty-four (64), ~~or thirty-two~~forty-five (45), or thirty-eight (3238) gallons in capacity and not weigh

more than two hundred (200), one hundred fifty (150), one hundred (100), and seventy-five (75) pounds, respectively, when fully loaded.

- (g) Be graffiti-free. Containers supplied by the Authorized Contractor shall be free of graffiti and all graffiti shall be removed promptly.
- (h) Be in good condition. Containers supplied by the Authorized Contractor shall:
 - (1) Be maintained by the same at a minimum level of good condition.
 - (2) Include identification as the property of the Authorized Contractor that includes a serial number, instruction for use and telephone number of the Authorized Contractor.

~~Containers of thirty-two (32) gallon capacity, whether supplied by the authorized contractor or not, shall, in addition to the requirements of subsections (a) through (h) above:~~

- ~~(a) Be equipped with two attached handles or bales, one on each side of the container, of sufficient strength and size and so located to facilitate the lifting and handling of the container;~~
- ~~(b) Be of such shape that it can be lifted and handled without unreasonable strain by one person; and~~
- ~~(c) Not weigh more than seventy-five (75) pounds when fully loaded.~~

Plastic or polyethylene disposal bags with wire or plastic tie closure shall meet the requirements of paragraphs (a) through (e) of this subsection, and the National Sanitation Foundation standards for polyethylene refuse disposal bags as follows:

- (a) Dimensions. The bags shall have a minimum circumference of sixty (60) inches and a minimum inner dimension of thirty-seven (37) inches.
- (b) Strength. The bags, exclusive of packaging and ties, shall have a minimum weight of one hundred five (105) pounds per one thousand (1,000) bags.

~~Authorized contractor supplied or approved solid waste containers with a capacity in excess of ninety (90) gallons and dimensions providing not less than one (1) cubic yard capacity shall meet the requirements of paragraphs (a) through (h) of this subsection.~~

V-200-3.31— Location of Solid Waste, ~~Recycling and/or Yard Trimmings~~ Recyclable Materials and/or Organic Materials Containers and ~~Debris~~ Drop Boxes

Each and every Solid Waste, ~~recycling, and yard trimmings~~ Recyclable Materials, and Organic Materials Container(s) shall be placed, kept and maintained at all times in a side, or back yard, in an enclosure or elsewhere on the premises so as not to be visible from the street or accessible to animals and may not protrude past the front of any building for multi-unit Premises. This requirement does not apply during the twelve (12) hour period before or after a scheduled collection day. To comply with the Americans With Disabilities Act ("ADA"), customers requesting an exception to this provision will be considered on a case by case basis by the City Manager or his or her designee.

Except for those Premises receiving service at the single unit curbside service level, ~~as defined in the Agreement for the Collection and Disposal of Solid Waste between City and Allied Waste Services, dated September 2, 1986 and as amended thereafter,~~ Containers shall not be placed, kept, maintained or serviced in a public street, sidewalk or public easement of any kind or in the front yard setback without prior written consent of CITY.

V-200-3.32— Solid Waste, ~~Recycling and Yard Trimmings~~ Recyclable Materials, and Organic Materials Containers: Use and Maintenance

Each and every Solid Waste, ~~recycling or yard trimmings~~ Recyclable Materials, or Organic Materials Container, shall be kept tightly sealed so as to prevent the escape or leakage from the Container of any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials or of any offensive vapors, gases or odors. No such container shall be so filled as to cause matter to overflow therefrom; and the gross weight of Solid Waste, ~~recyclables or yard trimmings~~ Recyclable Materials or Organic Materials placed or kept therein, including the weight of the Container, shall meet the requirements of Section V-200-3.30. Such Container shall at all times be kept clean and sanitary, and shall be sprayed and otherwise treated in such manner and to such extent and with such substance as may be necessary to repel and keep away insects and rodents, and render the container odor-proof.

No Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials shall be so compacted or otherwise placed or kept or accumulated in any Container in a manner which does not allow the contents of the

container to fall out, by its own weight, upon the container being lifted and turned upside down. No residential Solid Waste, Recyclable Materials, or Organic Materials containers shall be set out for weekly curbside collection containing dirt, soil, concrete, masonry or asphalt.

After reasonable notice and opportunity to be heard, CITY may determine that any Person occupying, owning, controlling or maintaining any Premises within the City has inadequate containers~~or, facilities for solid waste, recyclables, or yard trimmings or inadequate,~~ or frequency of Collection service for Solid Waste~~collection,~~ Recyclable Materials, or Organic Materials and may order that additional containers or facilities or increased frequency of Collection service be provided by said Person.

It shall be unlawful for any Person occupying, owning, controlling or maintaining any Premises within the City where Solid Waste~~is,~~ Recyclable Materials, Organic Materials, and/or C&D are created, ~~produced~~generated, or accumulated, to fail or neglect to procure sufficient number of containers for receiving and holding all Solid Waste ~~which is,~~ Recyclable Materials, Organic Materials, and C&D which are produced, ~~created~~generated, or accumulated upon such Premises or to fail or neglect to deposit Solid Waste, Recyclable Materials, Organic Materials, and C&D in containers or to fail or neglect to use and keep containers in good, usable, and sanitary condition. Provided, certain branches, trimmings, and wood may be securely bundled and set out for collection in accordance with regulations which are approved from time to time by the CITY.

Each unit of duplex~~or,~~ triplex, or four-plex shall be deemed to be a single unit for the purpose of this Chapter. Multiple dwelling units with ~~four~~five or more dwelling units on one parcel of property ~~and subject to the multi-unit service level pursuant to the Agreement for the Collection and Disposal of Solid Waste between the City of Milpitas and Allied Waste Services, dated September 2, 1986 and as amended thereafter,~~ shall be required to subscribe to Solid Waste~~container,~~ Recyclable Materials, and Organic Materials Collection service.

The CITY may prescribe mandatory garbage waste cart rental service for curbside services provided to Medium and High Density Development residences with limited setback space.

V-200-3.40— Minimum Allowable Collection Frequencies Disposal

Weekly Collection: No more than one week's accumulation of putrescible Solid Waste and Organic Materials shall be kept or be permitted to remain upon any Premises in the City. At least once each week all putrescible Solid Waste ~~produced~~and Organic Materials generated, kept or accumulated within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than one week's accumulation of non-putrescible Solid Waste and Organic Materials shall be kept in front-end loader Bins. At least once each week all Solid Waste or Organic Materials kept or accumulated in front-end loader Bins within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

30-Day Collection: No more than thirty (30) day's accumulation of non-putrescible Solid Waste~~, except recyclables,~~ or Organic Materials shall be kept or be permitted in Compactors and ~~debris~~Drop Boxes. At least once each thirty (30) days all such wastes kept or accumulated in Compactors and ~~debris~~Drop Boxes within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than thirty (30) day's accumulation of non-putrescible ~~recyclables~~Recyclable Materials shall be kept or be permitted in front-end loader Bins and ~~debris~~Drop Boxes. At least once each thirty (30) days non-putrescible recyclables kept or accumulated in front-end loader Bins and ~~debris~~Drop Boxes within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

60-Day Collection: No more than sixty (60) day's accumulation of non-putrescible ~~recyclables~~Recyclable Materials shall be kept or be permitted in Compactors only. At least once each sixty (60) day's non-putrescible ~~recyclables~~Recyclable Materials kept or accumulated in Compactors within any Premises in the City shall be disposed of in accordance with the provisions of this Chapter.

V-200-3.50— Hazardous Waste, Biohazardous Waste, Ashes

No Hazardous Waste, biohazardous waste, hot ashes, hot cinders or burning matter shall be placed or kept in any Solid Waste, ~~recycling or yard trimmings~~Recyclable Materials, Organic Materials, or C&D Containers or ~~debris~~Drop Box. No other ashes, cinders or stable matter shall be placed or kept in any Solid Waste, ~~recycling or yard trimmings~~Recyclable Materials, Organic Materials, or C&D Container or ~~debris~~Drop Box unless first wrapped in paper or other material.

V-200-3.60— Exemptions: Authorized Contractor

The provisions of this Section relating to the keeping or accumulation of any Solid Waste or Organic Materials Collected shall apply to an Authorized Contractor making such Collection, provided CITY may exempt the Authorized Contractor from the provisions hereof.

V-200-3.61— Exemptions: Employees of Authorized Contractor; Hardship Variance

Employees of an Authorized Contractor Collecting Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials within the City, are exempt from the charges applicable for Collection of Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials at the employee's primary place of residence, provided that this residence is located within the City, such employee provides proof of employment with the Authorized Contractor ~~to the City~~ on an annual basis, and employee receives curbside service.

The City Council may grant a variance from the provisions of Section V-200-3.20 or V-200-3.31 when the strict application of the Section creates an undue hardship. The following standards shall guide the City Council in the decision to grant or deny a variance request:

- (a) A variance is intended to alleviate a hardship imposed by the strict application of Section V-200-3.20 or V-200-3.31 and arising from the particular size, shape, topography, location, surrounding, or other condition of the property, not including economic hardship; and
- (b) An acceptable alternative method of disposal of Solid Waste, Recyclable Materials, Organic Materials, and C&D must be used by the Person owning, controlling, or maintaining the Premises for which the variance is requested. Acceptable alternative methods of disposal shall not include disposal of Solid Waste, Recyclable Materials, Organic Materials, and C&D at another Premises or any disposal facility, whether or not such Premises or disposal facility is located within the City.

Section 4 –Collection and Disposal

V-200-4.10— In General

No Person, other than an Authorized Contractor shall collect, remove, transport, process or dispose of any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D of any kind ~~produced~~ generated, kept or accumulated within or upon any Premises within the CITY except as hereafter provided. No Person shall permit the collection, removal, transportation, processing or disposal of any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D of any kind ~~produced~~ generated, kept or accumulated within or upon any Premises within the CITY, owned, leased, or rented by or under the control of or in the possession of such Person except by an Authorized Contractor pursuant to the provisions of this Chapter or except as hereinafter provided.

V-200-4.20— Delivery to the Authorized Contractor

Additional Services Allowed for Disabled Customers: Solid Waste, ~~recyclables~~ Recyclable Materials, and/or ~~yard trimmings~~ Organic Materials are to be delivered to an Authorized Contractor authorized to collect, ~~dispose~~ process, and/or ~~recycle~~ dispose same. The Authorized Contractor shall provide additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act (ADA), at the same level of service provided and rate charged to nondisabled residents, including, but not limited to, collecting Solid Waste, ~~Recyclables and Yard Trimmings~~ Recyclable Materials, and Organic Materials from Containers stored in side or back yards, replacing empty Containers in side or back yards, and maintaining a TDD telephone line. The Authorized Contractor shall not be required to enter upon a private driveway or upon a private yard or enclosure for the purpose of Collecting Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials, except to accommodate disabled residents as defined by the ADA or unless a customer receives backyard service.

Curbside Service: Solid Waste ~~accumulated in 32-gallon plastic or metal cans, or in 32-gallon plastic bags that are tied at the top, at residential premises with curbside services, shall be delivered to the authorized contractor by placing cans and/or bags alongside the street curb, but not in the street, in front of the premises wherein solid waste is produced and accumulated. Solid waste or recyclables, Recyclable Materials, and/or Organic Materials (including Food Waste and Yard Trimmings)~~ accumulated in carts at residential Premises with curbside services shall be delivered to the Authorized Contractor by placing the carts in the street with the wheels against the curb, two (2) feet from parked cars and mail boxes in front of the Premises wherein Solid Waste ~~and/or recyclables are produced~~, Recyclable Materials, and/or Organic Materials are generated and accumulated. In the event any ~~Producer~~ Generator fails to return containers to their approved locations in a timely manner, ~~Producer~~ Generator may be cited. After two citations within one year, the City may require the ~~Producer~~ Generator to contract for a minimum of 12 months subscription to push and return services as provided by Authorized Contractor.

~~Yard trimmings shall be delivered to an authorized contractor in an authorized yard trimmings container by placing the cart in the roadway with the wheels adjacent to the curb. Tree prunings and branches shall be bundled with twine and cut in lengths no longer than three (3) feet long. Bundles shall be placed on the ground alongside the street curb adjacent to the yard trimmings container. Excess yard trimmings shall be placed in a clean thirty-two (32) gallon plastic or metal can provided by the resident alongside the street curb. Resident shall obtain a yard trimmings sticker from the authorized contractor and attach it to the container.~~

Single-family curbside service weekly set out of used motor oil and/or used cooking oil shall use only containers approved ~~one-gallon jugs available at City of Milpitas fire stations and from~~ and provided by the Authorized ~~Contractors~~ office Contractor.

Non-Curbside Service: Solid Waste ~~or recyclables accumulated in containers of thirty-two (32) gallons or larger capacity,~~ Recyclable Materials, and/or Organic Materials shall be delivered to the Authorized Contractor in a location on private property, consistent with the provisions of Section V-200-3.31, so as not to require the driver of the Collection vehicle to dismount from the vehicle in order to service the Containers. In the event that the driver is required to dismount due to the location of the ~~bin~~ Container(s), travel more than twenty-five (25) feet to the ~~recycling bin~~ Container(s), or because the ~~producer~~ Generator does not want the Collection vehicle on the ~~producer's~~ Generator's property, ~~or if site conditions require the use of a scout truck, the producer~~ the Generator shall be liable to the Authorized Contractor for ~~an additional charge (called a "push and return charge")~~ a backyard service rate for pushing, collecting and returning the Container(s). This ~~charge~~ rate shall also apply if the Authorized Contractor must use non-standard equipment ~~(scout truck)~~.

The Authorized Contractor shall not be liable for any damage to private property in the course of Collecting Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D or for delivery, maintenance, or removal of any Container or ~~debris~~ Drop Box, except for the negligence of the Authorized Contractor, its agents, servants and employees.

V-200-4.30— Ownership of Solid Waste ~~and Recyclables,~~ Recyclable Materials, Organic Materials, and C&D

It is expressly understood that all Solid Waste ~~and yard trimmings,~~ Recyclable Materials, Organic Materials, and C&D Collected become the property of the Authorized Contractor at the time of Collection. It is expressly understood that title to all ~~recyclables~~ Solid Waste, Recyclable Materials, Organic Materials, and C&D passes to the Authorized Contractor upon being set out at the usual place of Collection.

V-200-4.40— Landfilling of ~~Recyclables~~ Recyclable Materials Prohibited

No Authorized Contractor shall permit the landfilling of ~~recyclables~~ Recyclable Materials except where not prohibited by contract.

Section 5—Authorized Contractors

V-200-5.10— Authority

The CITY is empowered to enter into a contract or contracts with, or authorize staff to issue permits, in accordance with an approved permit system, to any Person for the right to engage in the business of Collecting, removing, transporting, processing or disposing of any or all Solid Waste, ~~recyclables~~ Recyclable Materials, Organic Materials, and/or ~~yard trimmings produced~~ C&D generated, kept or accumulated within the City. The CITY may grant an exclusive contract to any single Person to engage in the business of Collecting, removing, transporting, processing or disposing of any or all Solid Waste, ~~recyclables~~ Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~ C&D if CITY deems an exclusive contract necessary or convenient for the efficient Collection and removal of Solid Waste, ~~recyclables~~ Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~ C&D and the preservation and protection of the public health, safety and general welfare.

V-200-5.11— Contract Provisions

Each Authorized Contractor(s) providing residential and non-residential Solid Waste, Recyclable Materials, Organic Materials, and C&D Collection services shall comply with all licenses, permits, or written approval requirements of the CITY. Such written approval shall be contingent upon the Authorized Contractor's demonstrated capability to comply with these standards and use of equipment, which is safe and sanitary.

Any contract executed hereunder may provide that the Authorized Contractor(s) shall have the right to Collect and receive the Collection charges and fees established therein for the Collection, transportation, removal, processing and/or disposal of Solid Waste, ~~recyclables~~ Recyclable Materials, Organic Materials, and/or ~~yard trimmings~~ C&D; provided, however, City may elect to Collect and receive said Collection charges and fees subject to the contract provisions

concerning the remittance thereof to the Authorized Contractor. Said contract shall also provide for the compensation to be paid to CITY by the Authorized Contractor for the granting of the right to engage in said business. Nothing herein contained shall be deemed to limit the authority of the CITY to renew or extend a contract upon the expiration of any term thereof. The contract may contain such other terms, covenants and conditions as the CITY shall deem necessary or convenient for the efficient Collection, transportation, removal, processing and/or disposal of Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard-trimmings~~C&D and the preservation and protection of the public health, safety, peace and welfare.

V-200-5.20— General Compliance

No Authorized Contractor shall Collect, remove, transport, process or dispose of any Solid Waste, ~~recyclables~~Recyclable Materials, Organic Materials, and/or ~~yard-trimmings~~C&D except in full accordance and compliance with the provisions of the contract existing between the Authorized Contractor and CITY and the provisions of this Chapter and all rules and regulations issued hereunder. Any license, privilege or authorization granted in any such contract to any Person to engage in the business of Collecting, removing, transporting, processing or disposing of any Solid Waste, ~~recyclables, or yard-trimmings, produced~~Recyclable Materials, Organic Materials, and/or C&D generated, kept or accumulated in the City shall be conditioned upon the faithful performance by such Person or authorized subcontractors, if any, of any and all terms, covenants, conditions and provisions in or of said contract, the provisions of this Chapter, and all rules or regulations issued thereunder.

V-200-5.21— Forfeiture of Contract for Noncompliance

Any violation of this Chapter or any rule or regulation promulgated hereunder shall entitle CITY to cancel and terminate its contract with or revoke the permit of the Authorized Contractor and to relet said contract or issue new permits.

V-200-5.30— Statements, Payments, Records

Each and every Authorized Contractor shall ~~file with the City, maintain all records and submit to CITY all reports, statements, and payments in full accordance and compliance with the provisions of the contract existing between Authorized Contractor and CITY. Unless otherwise provided in the contract between the Authorized Contractor and CITY, Authorized Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of the calendar month or quarter, as applicable, and Authorized Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall, at a minimum, include all data and information as described in the contract between the Authorized Contractor and CITY.~~ For each calendar month during which the Authorized Contractor engages in such business and for each calendar month during which the Authorized Contractor or authorized subcontractor(s) collect any receipts, revenues or compensation for the Collection, transportation, processing and/or disposal of Solid Waste, ~~recyclables, or yard-trimmings produced~~Recyclable Materials, Organic Materials, and/or C&D generated, kept or accumulated in the City, Authorized Contractor shall submit to CITY a written statement of the total gross receipts collected or received by the Authorized Contractor and any authorized subcontractor(s) during the calendar month for which such statement is rendered and filed. Each such statement shall also separately state the total gross receipts collected or received by the Authorized Contractor and those received by each of any authorized subcontractors during said calendar month. Such statement shall be certified as true and correct by such Authorized Contractor and by each of any authorized subcontractors.

No statement filed hereunder shall be conclusive as to the matters set forth therein, nor shall the filing of the same preclude CITY from collecting by appropriate action such sum as is actually due and payable hereunder. The statement and each of the several items therein contained shall be subject to audit and verification by the CITY, and CITY may examine, audit and inspect such books and records of any Person who engages in the business of Collecting, transporting, processing and/or ~~processing or~~ disposing of any Solid Waste, ~~recyclables, or yard-trimmings produced~~Recyclable Materials, Organic Materials, or C&D generated, kept or accumulated in the City, and of any authorized subcontractors, as may be necessary to ascertain the correct amount of the sums due CITY. Authorized Contractors and any authorized subcontractors are hereby required to permit an examination of such books and records for the purposes aforesaid.

~~Each of the above mentioned written statements shall be filed within sixty (60) days after the calendar month for which such statement is rendered. The above mentioned~~Unless otherwise provided in the contract between the Authorized Contractor and CITY, the above-mentioned sums due CITY shall be due and payable, for each calendar month for which a written statement is required, within sixty (60) days from and after each such calendar month; and said sum for each of said calendar months shall be overdue on the sixty-first day after each such calendar month. If the sixtieth (60) day following the end of the month falls on a weekend or a City-recognized holiday, said payment shall be due on the next regular business day.

Unless otherwise provided in the contract between the Authorized Contractor and CITY, each Authorized Contractor shall keep and maintain full and complete books of account and other records showing all business transacted in the City by such Person, and by each and every authorized subcontractor(s), if any, including, but not by way of limitation, records of all monthly collections and receipts, expenses, profits, supporting statements and vouchers, balance sheets and profit and loss statements and other documents accurately reflecting all such business. All such books and records shall be subject to audit and inspection at any and all times by CITY and its authorized officers, agents and employees, and shall be made available at said office for such inspection or audit at any and all reasonable times upon request of the CITY.

Unless otherwise provided in the contract between Authorized Contractor and CITY, the Authorized Contractor shall file, for each year during which the Authorized Contractor engages in such business, an annual report with the CITY showing, at a minimum:

- (a) The total gross receipts actually collected or received by the Authorized Contractor and any authorized subcontractor(s) during said year, which shall be examined by the Authorized Contractor's independent certified public accountants, and shall include the opinion of such accountants as to whether such statement is a fair representation of the data included therein; and
- (b) A breakdown of such total gross receipts by programs and service level types showing the amounts received or collected by the Authorized Contractor and by each of any authorized subcontractor(s).

~~Such reports shall be filed within ninety (90) days after the end of the year for which such report is made.~~

V-200-5.31— Interest

Delinquent sums due CITY by Authorized Contractor(s) shall ~~bear interest from the date of delinquency to date of payment at the rate of ten percent (10%) per annum.~~ be subject to a delinquency penalty of two percent (2%), which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%) for each additional month the payment remains delinquent.

V-200-5.40— Place and Manner of Disposal

No Authorized Contractor shall dispose of any Solid Waste, Recyclable Materials, Organic Materials, or C&D anywhere in the City unless and until the manner and place of disposal within the City has been authorized or approved by the City Council (either by contract, resolution or ordinance). Except as otherwise provided in an exclusive contract between an Authorized Contractor and CITY or in an exclusive disposal agreement between CITY and the owners of ~~Newby Island~~ the disposal facility, the fees for disposal at ~~Newby Island~~ the disposal facility shall be charged directly to the Authorized Contractors at the same rate charged to the general public at that disposal facility.

V-200-5.50— Faithful Performance Bond

When the CITY authorizes or designates a Person or firm to provide Solid Waste, Recyclable Materials, Organic Materials, and C&D Collection services for its jurisdiction through contract, franchise, permit, or license such Person or firm shall submit proof of adequate financial resources and experience to properly conduct the operation authorized.

Each and every Authorized Contractor shall, ~~at the time of execution of the~~ within seven (7) calendar days of the City's notification to Authorized Contractor that the CITY has executed the contract or ~~issuance of~~ issued the permit authorizing Authorized Contractor to engage in business, furnish to CITY and file with the City Clerk a corporate surety bond, payable to the CITY, in a penal sum required by the CITY (and approved as to form by the City Attorney), executed by the Authorized Contractor as principal and by a corporate surety as surety, ~~conditioned upon~~ securing the faithful performance by the Authorized Contractor and any authorized subcontractor(s) of its obligations under said contract and of all provisions of this Chapter. Such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the term of said contract. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the CITY.

As an alternative to the performance bond required above, at CITY's option, the Authorized Contractor may deposit with CITY a fully prepaid irrevocable letter of credit for at least the duration of the contract year for which the letter of credit is deposited. The amount, form, and issuer of such letter of credit shall be subject to the approval of CITY's Risk Manager and the City Attorney.

CITY shall have the right to draw against the faithful performance bond or the letter of credit in the event of a breach or default of Authorized Contractor or the failure of Authorized Contractor to perform fully any obligation under

the contract or permit authorizing Authorized Contractor to engage in business. Within five (5) calendar days of receipt of notice from CITY, Authorized Contractor shall renew or replace such sums of money as needed to bring the faithful performance bond or letter of credit current.

V-200-5.60— Interference with Authorized Contractors

No Person shall interfere with or obstruct the authorized activities of an Authorized Contractor in the Collection, transportation, removal, processing ~~and/or~~ disposal of Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, and/or C&D.

V-200-5.70— Identification and Lettering of Vehicles and Containers

The Authorized Contractor shall letter each vehicle used in Collection activities to include a vehicle identification number, the name of the Authorized Contractor, and the local business telephone number of the Authorized Contractor. The lettering size shall be not less than ~~two and one-half~~ four inches (~~2-1/2"~~ 4") high. Any Authorized ~~contractor supplied~~ Contractor-supplied Solid Waste, ~~recycling and/or yard trimmings~~ Recyclable Materials, Organic Materials, and/or C&D Container shall be lettered with the Authorized Contractor's name and local business telephone number ~~with letters not less than two and one-half inches (2 1/2") high~~ in a form approved by CITY.

Section 6 —Authorized Contractors' Rates, Charges and Fees

V-200-6.10— Fees and Charges in General

All charges for the Collection and removal of Solid Waste, ~~recyclables~~ Recyclable Materials, Organic Materials, and/or yard trimmings C&D shall be due and payable ~~on the first of the month following such collection and removal in accordance with the payment terms set by Authorized Contractor and approved by CITY.~~

The Authorized Contractor shall not demand any fees from the ~~producers~~ Generators of Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, and/or C&D except as provided in the contract between the Authorized Contractor and CITY.

Disputes over charges made or as to the character of the services performed shall be decided by the City Manager or his or her designee.

V-200-6.11— Senior Citizen Rate

Rates for residential Premises with curbside collection for persons sixty-two (62) years or older and who are responsible for paying the water bill of the dwelling, upon application, shall be reduced upon such terms and conditions as are agreed to between City and Authorized Contractor. Authorized Contractor shall verify eligibility for the senior rate using driver's license or birth certificate and proof of residency.

Section 7 —Manner of Collection, Removal and Transportation

V-200-7.10— Sorting ~~Solid~~ Waste on Streets

No Person shall sort, separate, or segregate any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D of any kind within or upon any public street or place except as expressly authorized by CITY.

V-200-7.20— Collection and Transportation

No Person shall Collect, transport or receive any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D within or upon any public streets in the City, or anywhere in the City, except in ~~leak proof~~ leak-proof vehicles so constructed that no Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D can leak or sift through or fall out, or be blown from, such vehicle. Vehicles used to Collect or transport Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials shall be completely covered, and shall be kept covered at all times except when Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D is/are being actually loaded or unloaded, and except when said vehicles are moving along a Collection route in the course of Collection. Collection and transportation of any and all Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D shall be so conducted that no Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, or Organic Materials will fall, drain or spill out of the Collecting or transporting vehicle. Any Person Collecting or transporting any Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D shall immediately pick up all Solid Waste ~~or recyclables which drops, spills, leaks or is,~~ Recyclable Materials, Organic Materials, or C&D which drop, spill, leak or are blown from the Collecting or transporting vehicle, and shall otherwise clean the place onto which any such Solid Waste, ~~recyclables, or yard trimmings~~ Recyclable Materials, Organic Materials, or C&D was/were so dropped, spilled, blown

or leaked. The Authorized Contractor shall limit its contents to twenty thousand (20,000) pounds per axle. The Authorized Contractor shall provide personnel and equipment necessary to provide push and return service in confined areas or other locations that have Collection and transport vehicle access limitations.

Authorized Contractor shall replace lids or covers on Containers if appropriate, immediately after emptying the same and shall repair or replace at its expense any Container(s) damaged as a result of its handling thereof, normal wear and tear excepted.

Authorized Contractor may refuse service and Collection if any Container fails to meet the requirements of Section V-200-3.30 of this Chapter provided Authorized Contractor shall give written notice (by leaving a copy thereof attached to said Container) of its reasons for refusing service and Collection.

V-200-7.30—~~Solid~~ Waste from Outside City

No Person other than CITY shall transport or permit to be transported into the City any ~~solid~~-waste of any kind ~~produced~~generated, kept or accumulated outside the City, for the purpose of keeping, accumulating, or disposing of it in the City unless authorized by CITY and no Person other than CITY shall keep, accumulate or dispose of in the City any ~~solid~~-waste transported or brought into the City from outside the City unless authorized by CITY.

V-200-7.40— Missed Collections

Unless otherwise provided in the contract between Authorized Contractor and CITY, Authorized Contractor shall Collect and remove from any and all Premises, ~~within twenty-four (24) hours after~~by the end of the business day following the demand, notice or request, any and all Solid Waste, ~~recyclables~~Recyclable Materials, and/or ~~yard trimmings~~Organic Materials which Authorized Contractor shall have failed to Collect ~~and remove~~a properly placed Container as required at the regular scheduled time. Authorized Contractor shall not refuse Collection service because of a violation of the rules unless Authorized Contractor has, in a reasonable manner, notified the customer in question of the rule.

V-200-7.50— Areawide Cleanup Service

Where provided by contract, Authorized Contractor shall provide such labor, supervision and equipment at its cost; and at times and dates agreed upon between the parties, sufficient to conduct an areawide cleanup collection of accumulated seasonal and extraordinary Solid Waste, Recyclable Materials, and/or Organic Materials. Authorized Contractor shall cooperate in any and every way with CITY to effectively provide such cleanup services, including accepting wastes collected by CITY personnel and permitting CITY personnel to inspect cleanup operations.

~~V-200-7.51— Household Dump Day~~

~~Pursuant to the terms of a contract between authorized contractor and City, Authorized Contractor shall provide at its solid waste disposal and compost facility site(s) nearest the City (or at such other site as may be agreed to between Authorized Contractor and the City) the privilege to any resident of the City to dispose of any nonputrescible waste free of charge subject to program criteria. Yard trimmings shall not be accepted on Household Dump Day after December 31, 1996 except as provided by City authorized permit. It is the intent of this section to allow free disposal and recycling of nonputrescible waste produced from residences within the City; it is not intended to authorize the free disposal of such materials generated from commercial or industrial sources or from sources outside the City.~~

~~Motor vehicle tires, auto batteries, mattresses and box springs, computer monitors and televisions, and appliances which contain refrigerants, including but not limited to refrigerators, chillers, freezers, ice makers and air conditioning units will be accepted provided the resident bringing the item shall pay a charge to be determined by the City for removal of the refrigerant from the appliance and for the disposal and/or recycling of both the refrigerant and the appliance or for disposal or processing of the tires, auto batteries, mattresses and box springs, computer monitors and televisions.~~

~~Nothing herein contained, however, shall prohibit any person from collecting or transporting solid waste (in excess of the minimum collection for which City service is provided) produced, kept or accumulated at a residential premises owned or leased by such person in the City and disposing of the same outside City limits at a site approved by the Health Officer.~~

V-200-7.60— Unauthorized Collection Prohibited

During the twenty-four (24) hour period commencing at 6:00 p.m. on any day preceding a day designated for Collection of ~~recyclables~~Solid Waste, Recyclable Materials, Organic Materials, and/or C&D, no Person, other than an Authorized Contractor, shall remove ~~recyclables~~Solid Waste, Recyclable Materials, Organic Materials, and/or C&D which have been placed at a designated ~~recycling~~ Collection location. Any and each such Collection in violation hereof from one or more designated ~~recycling~~ Collection locations during said twenty-four (24) hour period shall constitute a separate and distinct offense punishable as provided in this Code.

V-200-7.61— Right of Individual to Dispose of Recyclable ~~Waste Material~~ Materials and/or Organic Materials

Nothing in this Chapter shall limit the right of a person to donate, sell or otherwise dispose of ~~recyclables or yard trimmings~~ Recyclable Materials and/or Organic Materials, provided that any such disposal is in accordance with the provisions of this Chapter.

V-200-7.62— Civil Action by Authorized Contractor

Nothing in this chapter shall be deemed to limit the right of an Authorized Contractor to bring a civil action against any Person who violates Section V-200-7.60 of this chapter, nor shall a conviction for such violation exempt any Person from a civil action brought by an Authorized Contractor.

Section 8 - ~~Solid~~ Waste Disposal

V-200-8.10— Public Property

No Person shall throw, drop, leave, dump, place, keep, accumulate or otherwise dispose of any ~~solid~~ waste upon any street, way, sidewalk, gutter, stream, or creek or the banks thereof, or any public place or public property, or sweep, gather or take any ~~solid~~ waste from any such place or property or portion thereof or throw, place, deposit, dump, drop, leave, keep or accumulate it in any other such place or property or portion thereof, either with or without intent to later remove the same, except with the written prior permission of the Health Officer. The burden of proving such consent shall be on the Person doing any such thing.

V-200-8.20— No ~~Solid~~ Waste on Premises, Except that ~~Produced~~ Generated Thereon

Except as otherwise expressly authorized by the provisions of this Chapter, no Person other than CITY shall place, keep, accumulate or dispose of any ~~solid~~ waste of any kind in or upon any Premises, land or place in the City other than the Premises wherein such ~~solid~~ waste is ~~produced~~ generated unless so authorized by resolution or ordinance of the CITY; and no Person other than CITY shall establish, maintain or operate any dump or disposal grounds in the City for the keeping, accumulation or disposal of any ~~solid~~ waste of any kind unless so authorized by permit of the CITY; and no Person shall permit any Premises, land or place in the City owned, leased, rented or in the possession or under the control of such Person to be used for the keeping, accumulation or disposal of any ~~solid~~ waste of any kind other than ~~solid~~ waste ~~produced~~ generated thereon, unless so authorized by permit of the CITY.

V-200-8.21— Burying ~~Solid~~ Waste

Except as otherwise expressly authorized by the provisions of this Chapter, no Solid Waste ~~of any kind~~, Recyclable Materials, or Organic Materials shall be buried anywhere in the City.

V-200-8.22— Burning ~~Solid~~ Waste

Burning of Solid Waste, ~~recyclables, yard trimmings or scrap wood~~ Recyclable Materials, or Organic Materials is prohibited.

V-200-8.23— Fertilization of Land

Stable matter and processed ~~yard trimmings~~ Organic Materials or compost may be used to fertilize lands subject to such regulations as the Health Officer may impose to protect the public health and safety.

Section 9 —Enforcement and Penalties

V-200-9.10— Remedies Not Exclusive

This Section provides for issuance of a Notice ~~of violation~~ and/or an administrative hearing process which is in addition to any and all legal remedies, criminal or civil, which may be pursued by the CITY to address any violation of this Chapter.

V-200-9.20—~~Notice of Violation~~ Enforcement Process

- (a) Declaration of Public Nuisance: Any private property, or use of private and/or public property found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law including, but not limited to, Civil Code Section 3480. Any other City ordinance that provides that a violation of the ordinance may be declared a nuisance or a public nuisance may be abated pursuant to the procedures set forth herein, and be subject to those provisions allowing for cost recovery, at the discretion of the City Manager or his or her designee.

(b) Notice of Abatement: Any violation of this chapter may be abated through the abatement process identified in Section V-500-3.01.

(c) Administrative Citation: In addition, any violation of this chapter may be prosecuted through the issuance of an administrative citation under Chapter 21 of Title I.

~~The City may issue a notice of violation for any and all violations of any and all provisions of this Chapter. The recipient of such notice of violation may either: (a) pay the fee for that violation, if applicable and, by not requesting an administrative hearing, waive any right to such hearing and all other appeals provided under this Chapter; (b) pay the fee for that violation, if applicable, and appeal the notice of violation by requesting an administrative hearing within ten (10) days of issuance of the notice of violation; or (c) if no fee is set for that violation, may appeal the notice of violation by appearing at an administrative hearing pursuant to this Section. The notice of violation shall include the violation, the fee for that violation, if applicable, and the procedure for appeal of the notice of violation.~~

~~V-200-9.21—Notice of Violation Fees~~

~~Violations of Chapter 200 Solid Waste Management shall be administered as infractions pursuant to Section I-4.09, Penalty Provisions.~~

~~V-200-9.22—Fee to be Paid as a Deposit~~

~~If the recipient of a notice of violation is successful in appealing the notice, the fee shall be refunded to the recipient of the notice. If the appeal is not successful, the fee shall be forfeited.~~

~~V-200-9.23—Additional Reports~~

~~If any additional written reports concerning the notice of violation are submitted to the administrator for consideration, a copy of the report shall be served on the person requesting the administrative hearing at least three (3) days prior to the date of the hearing.~~

~~V-200-9.30—Notification~~

~~Any and all notifications under this Chapter shall be served by certified mail or by personal service, or by regular mail if service by certified mail or personal service is not possible. Service shall be deemed complete upon mailing or upon receipt if made by personal service.~~

~~V-200-9.40—Administrative Hearing Procedure~~

~~The following procedures shall be followed for an administrative hearing:~~

~~(a) Deposit of Fee, if Applicable. No administrative hearing to contest a notice of violation given pursuant to this Chapter shall be held unless the fee for that violation, if applicable, has been deposited in advance in accordance with this Section.~~

~~(b) Date of Hearing. Any administrative hearing shall be set for a date no later than fourteen (14) days from receipt of the request for such a hearing.~~

~~(c) Notification of the Hearing. Notice of the date, time, and place of the administrative hearing shall be served on the accused or the party requesting the Hearing at least seven (7) days prior to the Hearing date.~~

~~(d) Appearance at Hearing Required. The failure of any recipient of a notice of violation issued pursuant to this Chapter or party requesting an administrative hearing to appear at the hearing shall constitute a forfeiture of the fee, if applicable, and/or, if no fee is set for the violation, shall serve as an admission of the violation and shall subject the recipient to any and all other legal remedies available.~~

~~(e) Presentation of Evidence by the Accused or Requestor. At the administrative hearing, the party contesting the notice of violation or the party requesting the hearing shall be given the opportunity to testify and to present evidence concerning the violation or subject of the hearing. Any other persons having relevant evidence shall be allowed to present testimony at the hearing.~~

~~(f) Presentation of Evidence by the City. The notice of violation along with any incident reports attached to the notice shall constitute prima facie evidence of the respective facts contained in those documents.~~

~~V-200-9.41—Administrator's Decision~~

~~After considering all of the testimony and evidence submitted at the administrative hearing, the administrator shall issue a written decision to uphold or dismiss the allegations contained in the notice of violation or other decision and shall list in the decision the reasons for that decision. The decision of the administrator shall be served on the applicable party pursuant to this Section. The decision of the administrator is final.~~

V-200-9.21 through V-200-9.50 ~~Late Payment Charges~~ Reserved

~~Any person who fails to pay any notice of violation fee imposed pursuant to the provisions of this Chapter, on or before the date that fee is due, shall also be liable for the payment of late payment charges. A late payment charge of ten percent (10%) of the original fee shall be imposed every seven (7) days from the date the fee was due, with the total late payment charges not to exceed one hundred percent (100%) of the amount of the fee.~~

V-200-9.51 ~~Collection of Fees and Late Payment Charges~~

~~Any and all notice of violation fees charged for violations of this Chapter and any and all late payment charges assessed for failure to pay the fee within the prescribed time limit shall be a personal obligation of the individual charged and may be collected by any and all legal means available.~~

V-200-9.60 ~~Multiple Offenses~~

~~Any violation which would otherwise be an infraction may be a misdemeanor if a defendant has been convicted of three (3) or more violations of this Chapter within the twelve (12) month period immediately preceding the commission of the offense, and such prior convictions are admitted by the defendant or are alleged in the accusatory pleading. For purposes of this Section, a bail forfeiture, payment of notice of violation fee and waiver of right to an administrative hearing at an administrative hearing shall be deemed to be a conviction of the offense charged.~~

V-200-9.70-9.60 ~~Violation an Infraction~~

It shall be unlawful to violate any provision of this Chapter. Violation thereof shall constitute an infraction pursuant to the provisions of Section Title I, Chapter 1 of the Milpitas Municipal Code and shall be punishable as therein provided.

V-200-9.80 ~~Debt~~

~~In addition to any other penalties herein provided, unpaid charges for the removal of solid waste, recyclables, or yard trimmings are a joint and several obligation of the producer thereof and the owner of the premises within which or upon which the same has been produced, and may be recovered in a civil action or a lien process, together with interest and costs.~~

V-200-9.90-9.70 ~~Nuisance Summary Abatement~~

Any nuisance maintained in violation of the provisions of this Chapter may be summarily abated by CITY. The expense of such abatement may be made a special assessment lien against the land upon which said nuisance is committed or maintained in accordance with the provisions of the Milpitas Municipal Code or applicable abatement procedures established by the laws of the State of California, and shall also constitute a personal obligation of the Persons causing the nuisance or allowing the same to exist.

For the purposes hereof, the City Manager is hereby designated as the public officer to perform the duties of Superintendent imposed by Title 4, Division 3, Part 2, Chapter 13, Article 3 of the Government Code of the State of California.

V-200-9.91-9.80 ~~Termination of Water Service for Nonpayment of Collection Charges and Fees~~

- (a) Single Family. The CITY shall be empowered to discontinue water service to any person receiving water service from CITY's water system for the nonpayment of any collection charges and fees established herein for the collection, transportation, removal, processing, or disposal of Solid Waste, ~~recyclables or yard trimmings produced~~ Recyclable Materials, or Organic Materials by said person or upon premises occupied by said person. In disconnecting such service, the CITY shall follow the procedures set forth in section VIII-1-6.10. Users shall be subject to the terms of section VIII-1-6.10. Service may be restored pursuant to the terms of section VIII-1-6.11. If payment is not received by 5:00 p.m. of the due date, a late fee equal to 5% of the amount due shall be imposed.
- (b) All Other Customers. All accounts are due and payable within forty-five (45) days of the date of the bill. Accounts shall become delinquent and a late fee of five percent of the amount due shall be imposed if payment has not been received by 5:00 p.m. on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall

be issued to the delinquent account stating that payment shall be due within fifteen (15) days of the date of the final notice and that service may be terminated after sixteen (16) of final notice if payment is not received. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed. AUTHORIZED CONTRACTOR shall notify CITY ten (10) working days prior to service termination.

Section 10 –Disaster Operations

V-200-10.10– Company Availability of Personnel and Equipment

In event of wartime, natural, physical or other disaster in or proximate to the City limits resulting in the declaration of a State of Emergency by the City Manager or City Council, Authorized Contractor shall make available to the CITY, at no additional cost to the CITY, all trucks, equipment and personnel normally performing services under the contract with CITY, for emergency operations conducted or directed by CITY emergency organization.

V-200-10.11– Temporary Possession and Employment

CITY shall have the right to take possession of all such equipment provided by Authorized Contractor, and to temporarily employ all Authorized Contractor personnel so provided as emergency operations forces of CITY, under the direction and control of CITY's Director of Emergency Services.

V-200-10.12– Use of Additional Equipment

In addition to the equipment and personnel above, Authorized Contractor shall make available such equipment and personnel as is reasonably practicable from those Authorized Contractor operations and resources not serving CITY; to the extent necessary to conduct effective Solid Waste, [Recyclable Materials, Organic Materials, and C&D](#) removal during any declared State of Emergency to the specifications of the CITY's Director of Emergency Services.

Section 11– Interruption of Service by Labor Dispute

V-200-11.10– Temporary Possession by CITY

In the event the Solid Waste, [Recyclable Materials, Organic Materials, and/or C&D](#) Collection or disposal services of Authorized Contractor are interrupted by a labor dispute and scheduled Collection or disposal services are discontinued for more than seventy-two (72) hours, CITY shall have the right to forthwith take temporary possession of all facilities and equipment of Authorized Contractor for the purpose of continuing the service which Authorized Contractor has agreed to provide to preserve and protect the public health and safety. CITY shall have the right to retain possession of said facilities and equipment and to render the required service until Authorized Contractor can demonstrate to the satisfaction of the CITY that required services can be resumed by Authorized Contractor; provided, however, that such temporary assumption of Authorized Contractor's obligations under the contract with CITY shall not be continued by CITY for more than one hundred twenty (120) days from the date such operations were undertaken. Should Authorized Contractor fail to demonstrate to the satisfaction of the CITY that required services can be resumed by Authorized Contractor prior to the expiration of the aforementioned one hundred twenty (120) days, and unless otherwise provided in the contract, the contract may be terminated at the option of CITY and the rights and privileges granted in such contract canceled.

V-200-11.11– Gross Revenue to CITY

During any period in which CITY has temporarily assumed the obligations of Authorized Contractor under a franchise agreement, CITY shall be entitled to the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses applicable or allocable to said period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury of CITY to the credit of the General Fund. The loss, if any, during such period shall be borne by CITY. Final adjustment and allocation of gross revenue, costs and expenses to the period during which CITY temporarily assumed the obligations of Authorized Contractor shall be determined by an audit by a certified public accountant and prepared in report form with his or her opinion annexed thereto. The cost of the audit shall be paid by Authorized Contractor.

V-200-11.12– Temporary Employment by CITY

Employees of Authorized Contractor may be employed by CITY during any period in which CITY temporarily assumes the obligations of Authorized Contractor under the contract. Provided, however, that the rate of compensation to be paid such employees, or any other employees, shall be the rate or rates in effect at the time Authorized Contractor's service was interrupted by the labor dispute.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.